TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 332 ~~94~~ 12.

LEWIS C. KARRICK, APPELLANT,

vs.

CHARLES L. HANNAMAN.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF UTAH.

FILED FEBRUARY 17, 1894.

(15,511.)

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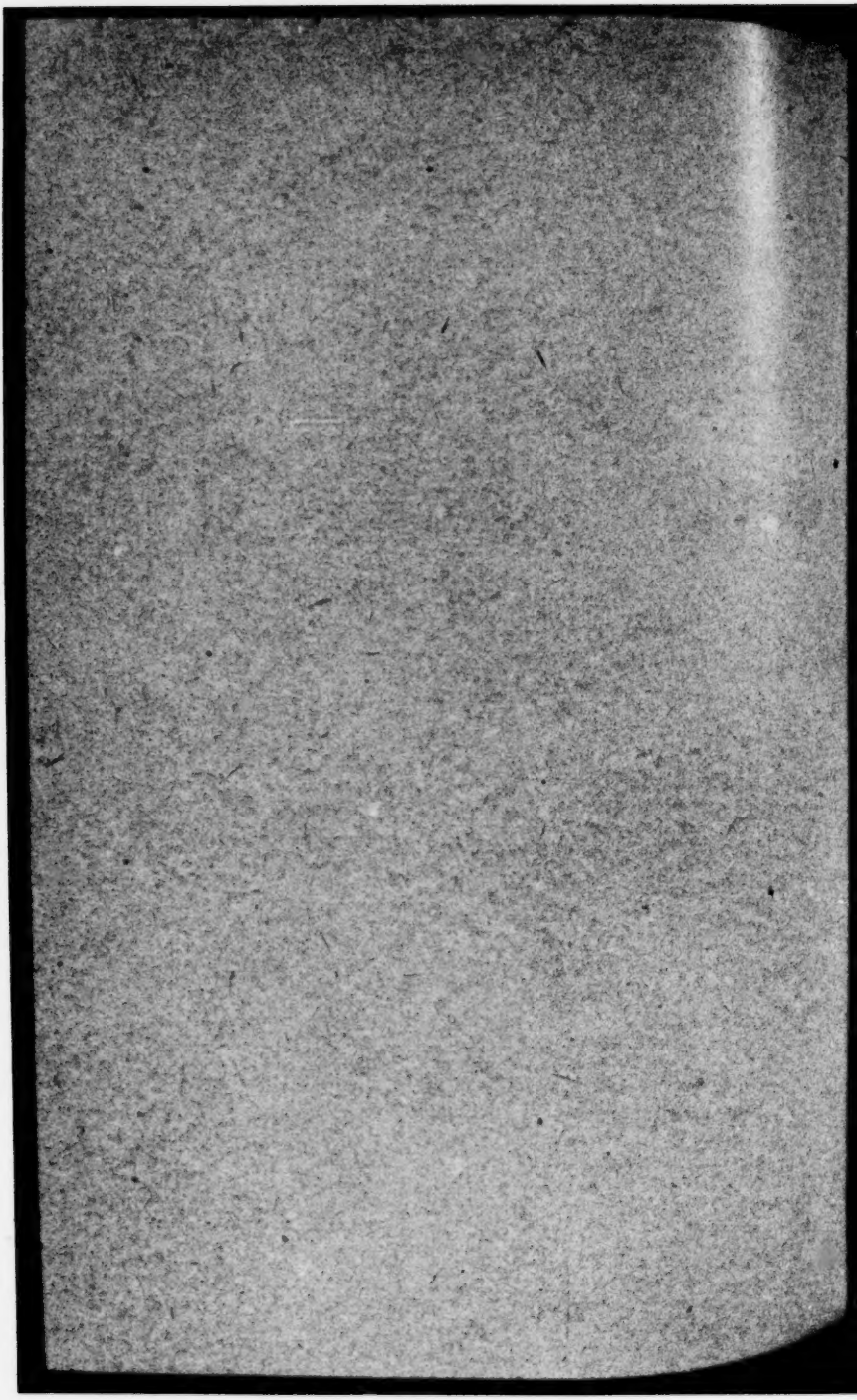

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a In the Supreme Court of Utah Territory.

C. L. HANNAMAN, Respondent,
vs.
L. C. KARRICK *et al.*, Appellants.

Transcript.

Marked: Filed June 4, 1892. Jos. P. Bache, clerk supreme court of Utah. No. 286.

Endorsed: Third district court, Utah. C. L. Hannaman *vs.* L. C. Karrick *et al.* Transcript on appeal. Filed June 3rd, 1892. Henry G. McMillan, clerk.

1 In the Third Judicial District Court of the Territory of Utah, Salt Lake County.

CHARLES L. HANNAMAN, Plaintiff,
vs.
LEWIS C. KARRICK and THE BAST-MARSHALL MERCANTILE COMPANY, a Corporation, Defendants.

Said plaintiff complains and alleges—

That the said Bast-Marshall Mercantile Company is and at all the times hereinafter mentioned since about the 1st day of December, A. D. 1889, was a corporation organized under the laws of this Territory.

That on the 3rd day of February, 1886, said plaintiff entered into a partnership with the defendant Lewis C. Karrick under the agreement, a copy of which is hereto annexed, marked Exhibit "A," and made a part of this complaint.

That upon the making of said agreement plaintiff and said defendant commenced and carried on the said mercantile and laundry business in conformity therewith, plaintiff in all respects performing his part of said agreement until on or about the 1st day of February, 1888.

That on the date last aforesaid the said defendant, Lewis C. Karrick, took exclusive possession of the partnership books and stock and premises wherein said business was carried on, and ever since has prevented plaintiff from having access to the same or from participating in any manner in said partnership business or deriving any of the benefits of the same.

That said plaintiff has at all times been ready and willing
2 to perform his part of said agreement, of which said defendant, Karrick, has at all times been informed.

That during the time last aforesaid said defendant has wrongfully and in fraud of the rights of plaintiff operated and controlled said partnership business for his own exclusive use and benefit and converted and applied to his own use from the receipts, proceeds, and profits of the same large sums of money, greatly exceeding the proportion thereof to which he was entitled.

That on or about the 1st day of January, 1890, said defendant, Karrick, fraudulently and without the knowledge or assent of plaintiff, undertook to sell and dispose of to the defendant The Bast-Marshall Mercantile Company all the assets, stock in trade, good will, and property of every description owned or held by said partnership, and the said Bast-Marshall Mercantile Company, on or about the said last-named date, entered upon and took possession of said property, and in collusion with said defendant, Karrick, now wrongfully withhold said property from said plaintiff.

That said defendant, Bast-Marshall Mercantile Company, took said property with full notice of the rights of plaintiff, and that whatever consideration was paid therefor by it to the said Karrick would be converted by him to his own use, to the exclusion of plaintiff.

That the said assets, stock in trade, and good will of said business *is* of great value, and the net profits accruing upon said business *is* and has been during the past two years, as plaintiff is informed and believes, and so states the fact to be, not less than fifteen thousand dollars per year.

3 That by reason of the premises plaintiff has been damaged in the sum of twenty thousand dollars.

Wherefore plaintiff demands judgment:

1. That said partnership be dissolved.

2. That a receiver of the property thereof be appointed with the usual powers.

3. That said defendants be restrained by injunction from interfering with said property.

4. That the same be applied, first, to the payment of the partnership debts and the remainder be divided among the parties according to their respective rights.

5. That any transfer or assignment of said property by said Karrick to said Bast-Marshall Mercantile Company be set aside and cancelled.

6. That defendants respectively be required to account for all partnership property received, held, managed, or disposed of by them or either of them, as well as all proceeds thereof.

7. Plaintiff prays for general relief.

J. L. RAWLINS,
Att'y for Plaintiff.

TERRITORY OF UTAH, }
Salt Lake County, } ss:

Charles L. Hannaman, the above-named plaintiff, being first duly sworn, says that the foregoing is true of his own knowledge except as to matters therein alleged on information and belief and as to those matters he believes it to be true.

CHARLES L. HANNAMAN.

Subscribed and sworn to before me April 16th, 1890.

[SEAL.] JOSEPH H. HURD,
Notary Public.

4 EXHIBIT "A."

This agreement, made the 3d day of February, A. D. 1886, by and between Louis C. Karrick and Charles L. Hanneman.

Witnesseth, that said parties hereby agree to become partners under the firm name of Hanneman & Co., and as such carry on a mercantile and a laundry business at No. 142 Main street, Salt Lake City, Utah Territory, substantially a continuation of the business of W. H. Yearian, and the Troy steam laundry, lately done at the same place, and also such other or different business as said partners may mutually agree upon.

The term of said partnership and business shall be five (5) years from the date hereof.

The capital stock of said firm is $25,000, of which the machinery, fixtures and stock in and pertaining to said laundry business constitute $10,000, and the stock in trade and fixtures in the mercantile business being the stock in trade and fixtures lately owned by and part of W. H. Yearian's, consisting of $15,000.

Of said capital stock Hanneman furnishes $5,000, being one-half (½) undivided of the laundry property, and Karrick furnishes the remainder $20,000, being the other one-half (½) undivided of said laundry property and stock in trade and fixtures bought of said Yearian.

Aside from and independent of the firm business, except as interest therein, compensation for services, Karrick loans Hanneman this day for a term of five (5) years, $5,000, secured by a mortgage on Hanneman's interest in the firm property.

On $15,000 of the capital stock as furnished by Karrick, interest shall be paid to him by the firm monthly, at the rate of 8 per cent. per annum until the principal thereof is paid, as below agreed.

Hanneman will give his entire time and attention to the said firm business, but Karrick only as he shall see fit.

Hanneman shall have the control and management of the business generally and entirely, except as Karrick may expressly designate, and such matters shall be subject to mutual agreement.

5 Of the net profits of the business one-half (½) shall go to Karrick to apply on repayment of the $15,000 of the capital stock furnished by him until all thereof is repaid; said net profits to be computed and so paid on the first day of January of each year.

The other half of the net profits of the business shall be left in the business except that after January 1st, 1887, each of said partners may draw thereof not to exceed $125 per month for personal expenses.

Profits and loss shall be shared equally and alike, and neither party shall have any salary or compensation for services rendered to the firm other than profits.

The title and interest of the respective partners in the firm property is to be proportionate to their respective contributions thereto, the statements thereof hereinbefore made being taken as a basis

and altered as payments are from time to time made by or to either party.

Witness the hands of said parties the day and year first above written.

L. C. KARRICK.
C. L. HANNEMAN.

Endorsed: No. 8430. Attach court and cause. Complaint. Filed April 17th, 1890. Henry G. McMillan, clerk. J. L. Rawlins, att'y for plaintiff.

6 In the District Court of the Third Judicial District of Utah Territory.

CHARLES L. HANNAMAN, Plaintiff,
vs.
LEWIS C. KARRICK and THE BAST-MARSHALL MERCANTILE COMPANY, a Corporation, Defendants. } Answer of Company.

The defendant "Bast-Marshall Mercantile Company" (and hereafter designated as defendant company), for its answer to the complaint in this action, states that it has no knowledge or information thereof sufficient to enable it to answer as to the alleged partnership set forth in said complaint and the alleged actions of plaintiff and defendant Karrick with reference to said partnership, and on that ground denies that on the third day of February, 1886, or any other date the plaintiff entered into partnership with the defendant Karrick under the agreement Exhibit "A" or in any other way or manner.

And denies that under said agreement plaintiff and defendant Karrick commenced or carried on said or any mercantile or laundry business in conformity therewith, or that plaintiff in all respects performing his part of said or any agreement until on or about the 1st day of February, 1888, or any other date.

And denies that on the date last aforesaid defendant Karrick took exclusive possession of the partnership books or stock or premises wherein said business was carried on, or has ever since prevented plaintiff from having access to the same or from participating in any manner in said partnership business or deriving any of
7 the benefits of the same.

And denies that plaintiff has at all times or at all been ready or willing to perform his part of said agreement, or of which defendant Karrick has at all times or at all been informed.

And denies that during the time last aforesaid or at any time defendant Karrick wrongfully or in fraud of the rights of plaintiff operated or controlled said partnership business for his exclusive use or benefit, or converted or applied to his own use from the receipts, proceeds, or profits of the same large sums or any sum of money greatly exceeding the proportion thereof to which he was entitled or at all.

And positively denies that on the 1st day of January, 1890, or on any other date defendant Karrick, without the knowledge or assent of plaintiff or at all, undertook to sell or dispose of to the defendant company all or any assets or stock in trade or good will or property of every description or property of any description owned or held by said partnership, or that said defendant company on or about said last-named date entered upon or took possession of said property, or in collusion with said defendant, Karrick, or wrongfully withholds said property or any part thereof from said plaintiff.

The defendant company further, answering and as a defense herein, states that more than one year ago, at the present place of business of defendant company, No. 142 Main street, Salt Lake City, and being the same place in which said Hannaman & Co. did business, the defendant Karrick commenced business in the name of L. C. Karrick in men's furnishing goods, and ran the
8 Troy steam laundry in connection therewith, and continued such business at said place up to and including the sale hereinafter mentioned, and during all that time advertised said business in the name of L. C. Karrick, had his individual name advertised on the front of said building in which he conducted said business, and removed therefrom the name of Hannaman & Co., and during all that time purchased and sold goods and wares at such place in his individual name and sent out all bills to his customers in said name of L. C. Karrick, and by reason of all which the public were induced to and did believe that defendant Karrick was conducting said business solely for himself and that he in fact did so.

That on the 9th day of December, 1889, while said Karrick was conducting said business as aforesaid, he sold, conveyed, and transferred to A. G. Bast, James H. Brown, E. D. Woodruff, Jas. Marshall, and L. L. Terry the said Troy laundry and belongings, the furnishing goods and fixtures in said building, No. 142 Main street, Salt Lake City, and the lease of said premises, said 142, being all the property, goods, and wares and leasehold estate of, in, and to said business carried on by defendant Karrick, as aforesaid, and to him belonging, and now claimed by the plaintiff as the partnership property of the plaintiff and defendant Karrick under said firm name of Hannaman & Co.

That at the time of such purchase by said Bast, Brown, Marshall, Terry, and Woodruff they paid defendant Karrick for said goods, wares, and property the sum of $5,000 cash, and paid him the balance, $24,797.91, cash in full and went into the possession of said goods, wares, and property, and remained in the exclusive possession thereof until, to wit, on the — day of January, 1890, when
9 they conveyed and transferred the same to the defendant company, and then received payment in full from defendant company for the same.

That at such sale and purchase from defendant Karrick or at the date of such payment or either of them said Bast, Brown, Marshall, Terry, and Woodruff, nor either of them, had any knowledge or notice of any partnership between plaintiff and defendant Karrick, and had no knowledge or notice of any claim whatever of the plain-

tiff of, in, or to any of said goods, wares, or property, nor did they or either of them have such knowledge at the time of said sale to defendant Karrick.

And that the defendant company at the time it purchased said goods, wares, and property had no knowledge or notice of any partnership between plaintiff and defendant Karrick, and had no knowledge or notice of any claim whatever of plaintiff in or to any of said goods, wares, or property, and the bringing of this action is the first notice or knowledge of defendant company of any claim of plaintiff to said goods or wares or any part thereof as partner of defendant Karrick.

That on or about the 27th day of January, 1890, plaintiff did make some claim to said leasehold estate, but nothing more.

The defendant company states that the plaintiff had knowledge *that* the negotiations between defendant Karrick and said Bast, Brown, Marshall, Terry, and Woodruff and those between said Bast, Brown, Marshall, Terry, and Woodruff and defendant company which led to and culminated in said sale by defendant Karrick and said sale to defendant company of said goods, wares, and
10 property, and did not make known to either said Bast, Marshall, Brown, Terry, Woodruff, or defendant company any claim or right whatever of or to the same, or that he was a partner in said business, and depriving them of an opportunity to consult him in the premises.

And by reason of all which and the delay of the plaintiff in bringing an action against defendant Karrick to close up said partnership business after he has been turned out and deprived of participating in the same, and permitting defendant Karrick to trade with and dispose of said partnership property as his own, plaintiff has estopped himself from asserting any right or title to said goods or property.

That since said purchase by defendant company it has been engaged in said business at said place, and has bought and sold goods to the extent that about two-thirds of the goods purchased by it from said Bast, Marshall, Brown, Terry, and Woodruff has been sold and taken away and other goods put in said store to supply the demands of trade.

The defendant company further states that the aforesaid negotiations and sales between defendant Karrick and said Bast, Marshall, Brown, Terry, and Woodruff and between them and the defendant company were made in good faith and not with an intention to in any way injure or defraud the plaintiff and without any knowledge or notice of any claim of plaintiff to any of said goods or property.

That defendants are solvent and able to respond in damages in any amount that might be recovered by the plaintiff in this action.

11 And defendant company, having fully answered, asks to be hence dismissed with its costs.

WM. C. HALL,
Attorney for Defendant Company.

TERRITORY OF UTAH, } ss:
County of Salt Lake, }

L. L. Terry, being first duly sworn, deposes and says that he is the secretary of the defendant company in the foregoing action; that he has heard read the answer in said action and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein contained on information or belief, and as to those he believes it to be true.

L. L. TERRY.

Subscribed and sworn to before me the 24th day of April, 1890.

WM. C. HALL,
Notary Public.

Endorsed: # 8430. Title cause. Answer of def't Bast-M. M. Co. Filed April 26, 1890. Henry G. McMillan, clerk, by Geo. D. Loomis, deputy. Service admitted April 26th, 1890. J. L. Rawlins, attorney for plaintiff. W. C. Hall, attorney for def't Co.

12 TERRITORY OF UTAH:

Third District Court.

CHARLES L. HANNAMAN, Plaintiff,
vs.
LEWIS C. KARRICK and THE BAST-MARSHALL MERCANTILE COMPANY, a Corporation, Defendants.

The Separate Answer of the Defendant Lewis C. Karrick to Plaintiff's Complaint.

The defendant Lewis C. Karrick admits that the defendant The Bast-Marshall Mercantile Company is a corporation, as alleged in plaintiff's complaint.

He admits that plaintiff and this defendant entered into a partnership as alleged, and that they commenced and carried on a mercantile and laundry business and also a dye-works business until about the 1st day of February, 1888, but the defendant expressly denies that the said plaintiff in all respects performed his part of said partnership agreement, and, on the contrary, alleges that the said plaintiff failed and neglected to perform his part of said agreement and conducted their said business to the verge of bankruptcy.

Defendant admits that on said last-named date that he took possession of the partnership books and stock and the premises wherein said business was so conducted and carried on, but he denies that he prevented the plaintiff from having access to the books of said firm, and he denies that he prevented the plaintiff from participating in any manner in the partnership business, and alleges that when he took possession of said books and business, as afore-
13 said, that the firm was insolvent and heavily in debt; that the plaintiff was owing the said firm a large sum of money

which he could not pay and which could not be collected at law because of plaintiff's insolvency; that the plaintiff was also owing this defendant a large sum of money, and that the partnership theretofore existing between the parties was then and there dissolved.

This defendant denies that the plaintiff has at all times been ready, willing, or able to perform his part of said agreement of partnership, and he denies that said plaintiff so informed him.

Defendant denies that during the time alleged in the complaint that he has wrongfully and in fraud of the rights of the plaintiff operated and controlled said partnership business for his own *and* exclusive use and benefit, and he denies that he has converted and applied to his own use from the receipts and proceeds and profits of the partnership business large sums of money or any sums of money exceeding the proportion to which the defendant was entitled.

He denies that on the 1st day of January, 1890, he fraudulently and without the knowledge or assent of plaintiff undertook to sell and dispose of to the defendant The Bast-Marshall Mercantile Company all the assets, stock in trade, good will, and property of every description owned or held by said partnership, and he denies that the last-named defendant, acting in collusion with this defendant, on or about the date last named entered upon and took possession of said property, and that in collusion with defendant wrongfully withheld said property from the plaintiff.

14 Defendant denies that defendant The Bast-Marshall Mercantile Company took said property with full notice of the rights of the plaintiff, and that whatever consideration — paid therefor to this defendant would be by him converted, to his own use, to the exclusion of plaintiff.

He denies that the said assets — stock in trade of said business *is* and *has* been during the past two years not less than the sum of fifteen thousand dollars per year.

He denies that the plaintiff has been damaged in the sum of twenty thousand dollars or any other sum, and he denies that plaintiff is entitled to judgment in this action.

And for further answer and by way of cross-complaint defendant alleges—

That shortly before the execution of the articles of partnership mentioned in the complaint the plaintiff importuned the defendant to enter into business with him, and represented that a certain laundry business in which plaintiff was engaged was very profitable, and that if it could be combined with a gents' furnishing goods business, then being conducted by one W. H. Yearian, that much money could be made. Plaintiff represented that his laundry machinery was worth at least the sum of ten thousand dollars, and that the good will and stock of said Yearian could be purchased for the sum of fifteen thousand dollars. Defendant had never engaged or had any experience in the business mentioned by plaintiff, and, relying entirely upon the truthfulness of the representations made by the

plaintiff, he executed the contract of partnership referred to
15 and paid the plaintiff five thousand dollars for one-half interest in the laundry machinery and plant, and placed to plaintiff's credit at the bank fifteen thousand dollars for the purchase of the Yearian business. The defendant also loaned to plaintiff the sum of five thousand dollars and received as security therefor a chattel mortgage upon the plaintiff's one-half interest in the laundry machinery.

Defendant further shows that the Yearian stock, it was afterwards ascertained, could not be purchased for the sum of fifteen thousand dollars as the plaintiff had represented, but that the purchase price amounted to the sum of seventeen thousand two hundred and fifty dollars, of which amount the plaintiff agreed to pay the sum of two thousand two hundred and fifty dollars, and did actually pay the sum of two hundred and fifty dollars, giving two notes to the said Yearian for the balance of two thousand dollars. Defendant shows that these notes were payable in thirty and sixty days respectively, and when the same became due plaintiff failed and neglected to pay the same, and defendant was compelled to take up and pay the same in order to protect the credit of the firm, and he shows that the plaintiff has failed to this day to pay said notes.

Defendant, further answering, alleges that at the time he was superintendent of the Calumet and Hecla group of mines, and his time and attention was fully occupied and he was unable to devote himself to the concerns of Hannaman & Co., and accordingly left the entire charge and control of matters to the said plaintiff, trusting him implicitly. He shows that immediately after the contract was signed the plaintiff went East to purchase machinery for
16 dye works, which it was proposed to add to the business, the plaintiff agreeing to be away but two weeks. The plaintiff failed to return as he had agreed, and after he had been absent about six weeks defendant was imformed by employés of the firm that the business was running at such loose ends that it needed the immediate personal attention of the plaintiff.

Accordingly the defendant telegraphed plaintiff at his last-known address, and, receiving no reply, telegraphed to the plaintiff in the care of a firm in Chicago, with whom plaintiff had business, and received back word that the whereabouts of plaintiff was not known.

Whereupon the defendant was compelled to neglect his other business and at financial loss and at great personal inconveni-nce to take the active management of the firm business until plaintiff returned.

Defendant shows that upon the return of plaintiff he could obtain no explanation as to what had delayed him in the East and caused him to neglect so shamefully the business upon which he had so recently entered and which he had contracted to manage and personally supervise.

Defendant further alleges that after the return of the plaintiff he entered upon the charge of said business and conducted the same without rendering any statement to the defendant or giving him

any information concerning the same until the 2nd day of January, 1887, when defendant insisted upon and after much delay received a statement which showed the business was being run at a profit. Defendant found, however, upon making an investigation of the condition of affairs, that the stock had not been increased; that there was a large overdraft at the banking-house of McCornick & Company, and that the business was losing money.

17

He also learned for the first time that upon the trip East of the plaintiff his account showed that he had expended for sundry items the sum of three thousand and forty-nine dollars and ten cents, and that on said trip he has used the money of the firm to the amount of three thousand eight hundred and forty-eight dollars and sixty-two cents, leaving unaccounted for the sum of seven hundred and ninety-nine dollars and fifty-two cents, for which the plaintiff either could not or would not render any account.

Defendant, further answering, alleges that, notwithstanding the provisions of the contract and agreement that the plaintiff would not draw any money out of the business of the partnership until after the 1st day of January, 1887, the said plaintiff drew from the business the following sums:

April, 1886, $48.50; May, 1886, $144.00; June, 1886, $152.25; July, 1886, $175.00; August, 1886, $111.00; September, 1886, $294.00; October, 1886, $77.00; November, 1886, $166.30; December, 1886, $270.00, making a total of $1,428.05, which, added to the aforesaid sum of $799.52, made $2,227.57, which the said plaintiff had drawn from the said business prior to the 1st day of January, 1887. In addition to this, the defendant had been compelled as aforesaid to pay the two Yearian notes, which amounted to the sum of two thousand dollars.

Defendant further alleges that the said plaintiff so grossly mismanaged said business that on the 1st day of January, 1888, there was an overdraft against the firm at the bank of six thousand nine hundred seventy-two dollars and fifty-seven cents, and the firm was also owing parties in the East and in this city the sum of six thousand dollars additional; that the laundry business was run at a very small profit and the store was running at a very heavy loss, and the dye works were also running the partnership in debt; that the plaintiff had failed to make good his contract and was continually drawing money from the firm while this defendant had largely increased his investments, as he was obliged to do from time to time to keep up his credit at the bank and make good the overdraft of the plaintiff.

18

This defendant shows that the stock of goods was in a most wretched condition, and that out of some seven thousand dollars' worth of underwear there was not one number in the whole lot but what was broken and incomplete. There were dozens of knit jersey jackets on hand, more than five times the number demanded by the trade, and the firm was compelled to sell and dispose — the same at a great loss and sacrifice. One hundred dozen shirts had been left in the cellar and had turned yellow and were comparatively

valueless. There were a large number of undershirts and drawers that had become damaged and were rejected by customers and that had been thrown under the counter out of sight and wasted.

The laundry was in a condition to be closed down. The cesspools into which the water was turned had been neglected until they were overflowing and damaging the neighbors and had become a public nuisance. The laundry machinery had been
19 neglected and was in an exceedingly bad shape, and the whole concern was in an unspeakable condition.

Defendant further alleges that the plaintiff failed and neglected to keep proper books of account and kept the accounts of the firm upon scraps of paper that were thrown about in different drawers and from which no intelligent idea could be obtained of the firm business.

Defendant further alleges that, finding the business of the partnership in the condition as aforesaid, and the plaintiff having failed and neglected to perform his agreement and the covenants of the articles of copartnership, the defendant had a consultation with the plaintiff and informed the plaintiff that the firm was constantly losing money; that the management of said plaintiff was bad and incompetent, and that he desired to wind up the affairs of the company, and, with that in view, that he would give the plaintiff an opportunity to buy out the defendant's interest in the concern, paying therefor what the same should be found to be reasonably worth, and that if the plaintiff did not desire and could not buy the defendant's interest, then the plaintiff should retire from the firm and said partnership should be dissolved and the assets and stock of the concern should be turned over to this defendant, who should assume the indebtedness of the partnership. Plaintiff agreed to this proposition and asked for sixty days' time in which to raise the money to buy out the defendant. At the end of the sixty days plaintiff informed the defendant that he had been unable to raise the money, and thereupon defendant took possession of said
20 business, stock, and assets, and from that time until the time hereinafter mentioned the defendant carried on the same in the name of L. C. Karrick and for his own exclusive use and benefit in the same place in which the firm of Hannaman & Company did business.

And during all that time, to wit, from on or about the 1st day of February, 1888, until the month of December, 1889, this defendant carried on said business in the name of L. C. Karrick, as aforesaid, and had his individual name advertised in front of said building in which he conducted said business, and removed therefrom the name of Hannaman & Company, and purchased and sold goods and wares at such place in his own individual name, and sent out all bills to his customers in said name of L. C. Karrick, and during all said time conducted said business for himself and with the full knowledge and acquiescence of the plaintiff; that in the month of December, 1889, while this defendant was conducting said business as aforesaid, he sold and transferred to A. G. Bast, James A. Brown, E. D. Woodruff, James Marshall, and L. L. Terry said

laundry and building, furnishing goods and fixtures in building No. 142 Main street, Salt Lake City, and the lease of said premises No. 142, being all the property, goods, wares, and leasehold estate of and to and in said business carried on by this defendant, as aforesaid, and to him belonging and now claimed by the plaintiff as the partnership property of the plaintiff and this defendant in said firm name of Hannaman & Co.

That at the time of said purchase by said Bast, Brown, Marshall, Terry, and Woodruff they paid defendant for said goods, wares, and property the sum of five thousand dollars cash, and
21 afterwards paid him the balance, twenty-four thousand seven hundred ninety-one dollars and eighty-seven cents, cash in full, and they went into possession of said goods, wares, and property and remained in the exclusive possession thereof until the month of January, 1890, when they conveyed and transferred the same to the defendant The Bast-Marshall Mercantile Company, a corporation, and received payment in full from the defendant corporation for the same.

That at said sale and purchase from this defendant or at the date of said payment or either of them said Bast, Brown, Marshall, Terry, and Woodruff had no knowledge or notice of any partnership between plaintiff and this defendant and had no knowledge or notice of any claim whatever of the plaintiff in or to any of said goods, wares, or property.

Defendant further shows that defendant company, at the time of the purchase of said goods, wares, and property, had no knowledge or notice of any partnership between plaintiff and this defendant and had no notice or knowledge of any claim whatever of the plaintiff in or to any of said goods, wares, or property, and the bringing of this action was, as defendant is informed and believes, the first notice or knowledge the defendant company had of any claim of plaintiff to said goods, wares, or property, or any part thereof, as the partnership property of this defendant and said plaintiff.

And defendant alleges — information and belief that plaintiff had knowledge of the negotiation between this defendant and said Bast, Brown, Terry, Marshall, and Woodruff and the negotiations between said Bast, Brown, Marshall, Terry, and Woodruff
22 *to* defendant company which led to and culminated in said sale of this defendant and said sale to defendant of said goods, wares, merchandise, and property, and that plaintiff did not make known to either of said Bast, Marshall, Terry, Brown, or Woodruff or to the defendant company any claim or right whatever of or to the same, or that he was a partner in said business. Defendant avers that by reason of the delay of the plaintiff in bringing this action to close up said alleged partnership business, and after said plaintiff had retired from the firm, and after he had permitted this defendant to trade with and dispose of said property as his own, and to purchase and mingle with the same new and other goods and merchandise, and to make extensive expenditure of money that the plaintiff is estopped from asserting any right or title to said

goods or property. Defendant alleges that the partnership known as Hannaman & Co. was wholly and completely dissolved, as aforesaid, on or about the 1st day of February, 1888, and that the said plaintiff was then owing and is now and ever since has been owing to this defendant the sum of seven thousand dollars, and at the same time he was indebted and still is indebted to the late firm of Hannaman & Co. in a large sum.

The defendant shows that he personally paid the firm debt at the time being and all outstanding debts and ran the business in his own name and for his own exclusive use and benefit without any objection from the plaintiff until the same was sold by this defendant as aforesaid.

Defendant further alleges that the aforesaid negotiations and sale between this defendant and the said Bast, Marshall,
23 Brown, Terry, and Woodruff and between them and the defendant company were made in good faith and *in* good intention and not to injure or defraud the plaintiff and without any notice or knowledge of any claim of the plaintiff *and without any notice or knowledge of any claim of the plaintiff* to any of said goods or property, as the defendant believes; that the defendants to this action are solvent and able to respond in damages in any amount that might be recovered by the plaintiff in this action.

Wherefore defendant prays judgment against said plaintiff:

First. That the plaintiff take nothing by his action.

Second. That the defendant recover of and from said plaintiff the sum of seven thousand dollars, with interest.

Third. That the plaintiff be required to pay the costs of this action, and that the defendant have such other and proper relief as may seem just.

O. W. POWERS,
Att'y for Defendant Karrick.

TERRITORY OF UTAH, }
County of Salt Lake, } *ss:*

L. C. Karrick, being duly sworn, on oath says that he is one of the above-named defendants, and that he has heard read the foregoing answer and cross-complaint and knows the contents thereof, and that the same are true of his own knowledge except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

L. C. KARRICK.

Subscribed and sworn to before me this 10th day of May, 1890.
[SEAL.] M. E. McENANY,
Notary Public.

24 Endorsed: #8430. Title cause. Answer and cross-complaint of defendant Karrick. Service accepted this 10th day of May, 1890. J. L. Rawlins, att'y for pl'ff, H. Filed May 10, 1890. Henry G. McMillan, clerk, by Geo. D. Loomis, deputy. O. W. Powers, att'y for def't Karrick.

In the Third Judicial District, Utah Territory.

CHARLES L. HANNAMAN, Plaintiff,
vs.
LEWIS C. KARRICK and THE BAST-MARSHALL MERCANTILE COMPANY, a Corporation, Defendants. } Demurrer.

Comes now the said plaintiff and demurs to the cross complaint filed herein by the defendant Lewis C. Karrick, and for cause of demurrer alleges that the said cross-complaint does not state facts sufficient to constitute a cause of action.

J. L. RAWLINS,
WALDEMAR VAN COTT,
Attorneys for Plaintiff.

Endorsed: #8430. Title court and cause. Demurrer. Received copy hereof May 19, 1890. O. W. Powers, att'y for L. C. Karrick. Filed May 20, 1890. Henry G. McMillan, clerk; Geo. D. Loomis, deputy.

25 In the District Court for the Third Judicial District of Utah Territory.

CHARLES L. HANNAMAN, Plaintiff,
vs.
LEWIS C. KARRICK, Defendant.

Comes now J. L. Rawlins, attorney for plaintiff, and by leave of court withdraws the demurrer to the cross-complaint herein.
Dated September 8th, 1890.

In the Third Judicial District Court of Utah Territory.

CHARLES L. HANNAMAN, Plaintiff,
vs.
LEWIS C. KARRICK and THE BAST-MARSHALL MERCANTILE CO., a Corporation, Defendants.

Comes now the said plaintiff and, answering the cross-complaint of said defendant, Lewis C. Karrick, which is filed herein, denies that shortly or at any time before the execution of said articles of partnership or at all the plaintiff importuned said defendant to enter into any business with him or represented that said laundry business, if combined with said gents' furnishing business, was very profitable, or that much money could be made, or ever said anything further than that said laundry business was a good investment, or that plaintiff represented that said laundry machinery was worth at least ten thousand dollars or any other sum, or that the good will or stock of said Yearian could be purchased for fifteen thousand dollars or any other sum, or that defendant had
26 never been engaged or had any experience in said business, or that said defendant, relying entirely or at all upon the truthfulness of any of the alleged representations alleged to have

been made by plaintiff, executed said contract of partnership; on the contrary, plaintiff alleges that he offered to sell one-half of the interest in the laundry machinery to plaintiff for five thousand dollars, and that said defendant made an examination into all of said business and said purchase independent of the plaintiff and made said purchase on his own responsibility and on his own judgment.

Plaintiff denies that he represented to said defendant that the Yearian stock could be purchased for fifteen thousand dollars or any other sum, or that plaintiff agreed to pay the sum of $2,250 or any other sum over and above what would be his just proportion as a partner in said business, and plaintiff alleges that said purchase was made by said plaintiff in his individual name, and that said defendant was not known in said purchase, by mutual agreement between plaintiff and defendant, and that it was expressly understood and agreed between plaintiff and defendant that all of said purchase price for said Yearian business was to be paid by said defendant.

Plaintiff denies that he neglected or failed to pay said notes or either of them, or that defendant was compelled to take up or pay the same or either of them in order to protect the credit of the firm or for any other purpose, or that plaintiff has failed to pay said notes or either of them; on the contrary, plaintiff alleges that defendant voluntarily took up said note that was due in thirty days
27 while said plaintiff was absent in the East on said firm business, and voluntarily took up said note that was due in sixty days, before the same became due, and that the amount of said notes with the knowledge of said defendant were credited to him in the firm business.

Plaintiff denies that at the time defendant was superintendent or at any time the defendant's time or attention was fully or at all occupied or he was unable to devote himself to the concerns of the said firm or left the entire charge or control of all matters to the said plaintiff or trusted him implicitly.

On the contrary, the plaintiff alleges that the said defendant did devote some time and attention to the charge and control of said business, and looked after the books and the premises, and kept himself posted generally in regard to the business.

The plaintiff denies that he agreed to be away but said two weeks or any other period of time, or that plaintiff failed to return as it is alleged he had agreed. The plaintiff, having no information or belief upon the subject, denies that defendant was informed by employees of the firm or any of them that during the absence of plaintiff said business was running at all loosely, or that it needed the immediate personal attention of plaintiff, and in like manner the plaintiff denies that the said defendant telegraphed to the plaintiff as first alleged, or that defendant was compelled to neglect or did neglect his other alleged business, or that at financial loss or at great or any personal inconvenience to take active or any management of the firm business until the plaintiff returned or for any other time, or that defendant could obtain no explanation as to

what delayed the plaintiff or caused him, as is alleged, to
28 neglect so shamefully or at all said business or which he had contracted, as alleged, to manage or personally supervise.

Plaintiff denies that defendant insisted about January 2nd, 1887, upon any statement of the business, or that after much or any delay defendant received such statement; on the contrary, the plaintiff alleges that said statement was furnished when the same ought to have been and was not delayed.

Plaintiff denies that defendant found, upon making investigation, or at any other time, that the stock had not been increased, or that said business was losing money, or that there was a large or any overdraft at said banking-house, of which overdraft the said defendant did not have full knowledge from day to day as the same was made, and, on the contrary, plaintiff alleges that said defendant knew of said overdraft from the beginning of the same until the same had accumulated to a considerable sum, and defendant acquiesced therein, and said overdraft was contracted in carrying on the legitimate business of said firm.

Plaintiff has no information or belief upon the subject and on that ground he denies that defendant learned then for the first time that plaintiff had expended while East said alleged sum of $799.52 or any sum, or that the same was not accounted for in the firm books at that time, or that plaintiff had drawn any sum of firm money above about $41.50 more than he expended while East, and, on the contrary, the plaintiff alleges that the money that he had drawn and that the money that he had expended were entered in the books at the proper time, and that the same were always open for the inspection of defendant, and defendant inspected same
29 at that time, and denies that plaintiff could not or would not render any account of such money, and, on the contrary, plaintiff alleges that he did render such account of said excess and that the same was entered in the books of said firm.

As to the allegations in said complaint of the sums of money that plaintiff withdrew from said business, aggregating $1,428.05, the plaintiff alleges that after said articles of partnership were entered into and after said business was entered upon the said plaintiff, with the knowledge and acquiescence of defendant, put into said business sums of money from time to time, and it was agreed that plaintiff might withdraw from said business such sums as he needed and at such times as were to him convenient. The plaintiff on his information and belief denies that such sums as are alleged to have been withdrawn by him, together with said $799.52, amounted to more than about the sum of $670.05, after deducting what plaintiff had put in as aforesaid, and plaintiff alleges that by January 1st, 1888, he put more into said business as aforesaid than he drew out under said oral agreement with defendant.

The plaintiff denies that defendant had been compelled as aforesaid, or in any other way or at all, to pay the two Yearian notes or either of them except as hereinbefore alleged.

The plaintiff denies that plaintiff so grossly mismanaged or at all mismanaged said business, or that by reason of said alleged mis-

management there were any overdrafts or overdraft or any debts owing by said partnership; on the contrary, plaintiff alleges that said overdraft and said debts were incurred legiti-
30 mately in carrying on said business, and defendant contracted obligations and debts in said business the same as said plaintiff did; denies that said store was running at a very heavy or any loss, and, on the contrary, plaintiff alleges that the same was running at a profit.

Plaintiff denies that he failed to make good his contract or was continually drawing money from said firm or drawing any money from said firm without the knowledge and consent of said defendant, or that defendant through necessity had largely or at all increased his investments, or that he was obliged to do so from time to time to keep up the credit at said bank or make good the overdraft of plaintiff; on the contrary, plaintiff alleges that said defendant was always anxious and willing and proffered to increase his investment and put more money into the firm.

Defendant denies that said stock of goods was in a most or any wretched condition or other than it should be, or that any of said numbers of underwear were broken or incomplete more than good business required, or that there were dozens or any number of said jackets on hand more than demanded by the trade, or five times the number or any number on hand more than demanded by the trade, or that the firm was compelled to sell or dispose of the same or any number of them at a great or any loss or sacrifice, or that one hundred dozen shirts or any number had been left in the cellar or had turned yellow or were at all valueless or damaged, or that there were large number- or any number of undershirts or drawers that had become damaged or were rejected by customers or that had been
31 thrown under the counter out of sight or wasted, and denies that said laundry was in a condition to be closed down, and, on the contrary, plaintiff alleges that said laundry was in a prosperous condition; denies that said cesspools were overflowing or damaging the neighbors or had become a public nuisance or a nuisance at all; on the contrary, plaintiff avers that defendant stated that he was a miner and had practical knowledge in reference to excavations, and that said defendant undertook and did superintend and overlook said cesspools and had them under his personal supervision, and that if the same were overflowing or in any unfit condition that it was through the fault and neglect of said defendant.

Denies that the laundry machinery had been neglected or was in an unspeakable condition or in any condition other than it should be.

Denies that plaintiff failed or neglected to keep proper books of account or kept the accounts of the firm upon scraps of paper, or that said alleged scraps of paper or any of them were thrown about in any manner or from which no intelligent idea could be obtained of the firm business, or that said accounts were kept in any manner other than they should be kept; on the contrary, plaintiff alleges that said defendant superintended the books of said firm and em-

ployed the persons to keep the same, and they were under his personal superintendence.

Denies that defendant found said business of the partnership in the condition he alleged as aforesaid or in any condition other than it should or could be under the circumstances, or that the
32 plaintiff failed or neglected to perform his agreements or covenants or either or any of them or of said articles, or that defendant had a consultation with plaintiff or informed the plaintiff that the firm was losing any money, or that the management of said plaintiff was bad or incompetent, or that defendant desired to wind up the affairs of the company, or with that end in view or for any other object that defendant would give plaintiff an opportunity to buy out the defendant's said interest for any sum, or that if the plaintiff did not desire or could not buy the defendant's interest, then that plaintiff should retire from the firm or said partnership should be dissolved or the assets or the stock of the concern should be turned over to the defendant or that he should assume the indebtedness of said partnership.

Denies that plaintiff agreed to said alleged proposition or any other proposition or asked for sixty days in which to raise the money to buy out the defendant, or at the end of said sixty days or any time plaintiff informed the defendant that plaintiff was unable to raise the money, or that thereupon or any time defendant took possession of said stock or assets, except as hereinafter alleged, or from that time or any time until the time hereinafter mentioned the defendant carried on the same for his own exclusive use or benefit in the same place in which the firm of Hannaman & Company did business.

Or during all said or any time defendant carried on said business in the name of L. C. Karrick, or had his individual name out in front of said building for a period longer than three months, or had removed therefrom the name of Hannaman & Co. for over three months, or purchased or sold goods or wares at such place in
33 his own individual name, or sent out all or any bills to his customers or any of them in the name of L. C. Karrick, or during all said time or any time conducted said business for himself or with the full or any knowledge or acquiescence of the plaintiff or carried on said business in any other manner except for the mutual benefit and profit of plaintiff and defendant; on the contrary, the plaintiff alleges that at about the time the plaintiff was forced to leave the active management of said partnership affairs that defendant became grossly abusive to the plaintiff by coming into the store and calling the plaintiff a son of a bitch and by saying that plaintiff and defendant could not live under the same roof together; that it would be necessary for one of them to die, and by defendant thrusting his hand into his hip pocket as though he were about to draw a revolver to kill the plaintiff and by keeping up said abusive and insulting language until a time when the defendant shoved the plaintiff out of the store in a violent and angry manner and threatened that if the plaintiff ever returned to the same that the defendant would kill said plaintiff. Plaintiff further

alleges that defendant is a large, strong, and vigorous man and endowed with great physical courage, and that the plaintiff is not a large, vigorous, or strong man or endowed with physical courage equal to that of said defendant, and that said defendant carried on in the manner aforesaid for the purpose of finally forcing said plaintiff out of said business, so that defendant could have the same for his own benefit and advantage; that said defendant importuned this plaintiff to retire from said business and give it up to
34 the said defendant; and when said plaintiff resisted said entreaties and refused so to do, then said defendant became grossly abusive as aforesaid and violently forced said plaintiff to relinquish the active management of said business.

Plaintiff avers that said business was constantly growing and improving, and that the same is now a large and most prosperous business, and that the same would have become so under the management of said plaintiff had plaintiff been allowed to retain the active management of said business; that it was apparent to said plaintiff and said defendant at the time the said plaintiff was forced to retire from said active management that said business would immediately become large and prosperous and very profitable; and plaintiff alleges that said defendant, seeing how said business would finally terminate, undertook and did force the said plaintiff from said business with a view of monopolizing all the profits obtained in the future from said large and growing business and trade.

Denies that in December, 1889, or at any other time or while defendant was conducting said business as alleged he sold or transferred to said persons or any of them said laundry or building, furnishing goods or fixtures or any of them in building number 142 Main street, Salt Lake City, or the lease on said premises, or that the same were all the property, goods, wares, or leasehold estate of or to or in said business carried on by said defendant as alleged, or that the same belonged to him; denies that at the time of said alleged purchase by said persons or any other time they or any
35 of them paid defendant for said property or any of it the sum of five thousand dollars or any other sum or afterwards paid him said balance or any other sum, or that they or any of them went into the possession of said property or any of it or remained in the exclusive or other possession thereof until January, 1890, or until any other time or at all, or that then or ever they or any of them conveyed or transferred the same property or any of it to said defendant, The Bast-Marshall Mercantile Company, or received payment in full or any payment from defendant corporation for the same; denies that at said alleged sale or purchase from said defendant, Karrick, or at the date of said alleged payment or at any other time said Bast, Brown, Marshall, Terry, or Woodruff had no knowledge or notice of any partnership between plaintiff and defendant or had no knowledge or notice of any claim of plaintiff in or to any of said goods, wares, or property; denies that said defendant company at the time of said alleged purchase of said goods or at any other time had no knowledge or notice of any partnership between plaintiff and defendant or had no notice or knowledge of

any claim of plaintiff in or to any of the said goods or property or the bringing of this action was the first notice or knowledge the defendant company had of any claim of plaintiff to said property or any part thereof or of said partnership property.

Denies that plaintiff had knowledge of the negotiations between Karrick and said Bast, Brown, Terry, Marshall, or Woodruff or the negotiations between said persons or any of them and said defendant company which led or culminated in said alleged sale of defendant Karrick or said alleged sale to defendant company
36 of said partnership property or of said laundry, or that plaintiff did not make known to either of said persons or to defendant Karrick or to said defendant company any claim or right to the same, or that he was a partner in said business; denies that by reason of said alleged delay of plaintiff or any delay in bringing this action to close up said partnership business or after said plaintiff had retired from the firm or at any time or after he had permitted this defendant to trade with or dispose of said property as his own or to purchase or to mingle with the same new or other goods or merchandise or to make extensive expenditure of money or any expenditure of money that the plaintiff is estopped from asserting his full right or title to said goods or property.

Denies that said partnership known as Hannaman & Company was wholly or completely or at all dissolved as aforesaid or otherwise either at said date or at any other time, or that plaintiff was then or ever or is now or at any time or ever since or ever has been owing said defendant, Karrick, the sum of seven thousand dollars, or that at the same time or any time or ever he was in debt or still is in debt to said firm in a large sum or any sum; denies that said defendant personally paid the firm debt or any of it at said or any time or all or any of the outstanding debts, or ran the business in his own name or for his own or exclusive use or benefit or without objection from plaintiff until said sale or at any other time; denies that said negotiations of sale or either or any of them between said defendant, Karrick, and said five named persons or between them or any of them and said defendant company
37 were made in good faith or in good intention or not to injure or defraud plaintiff or without full notice of knowledge of the claim of plaintiff to all of said goods or property, or that said defendants or either of them in this action are or is solvent or able to respond in damages in any amount of plaintiff's claim and which he might recover in this action.

Wherefore plaintiff prays that said defendant, Karrick, may take nothing by his said cross-complaint, and that the same may be dismissed and that plaintiff may recover his costs herein.

J. L. RAWLINS,
WALDEMAR VAN COTT,
Attorneys for Plaintiff.

TERRITORY OF UTAH, }
County of Salt Lake, } ss:

C. L. Hannaman, being first duly sworn, deposes and says that the foregoing answer to the cross-complaint herein is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

C. L. HANNAMAN.

Subscribed and sworn to before me this 18th day of September, 1890.

[SEAL.] WALDEMAR VAN COTT,
Notary Public.

Endorsed: #8430. Title court and cause. Answer to cross-complaint. Received copy hereof Sept. 20th, 1890. O. W. Powers, att'y for defendant. Filed Sept. 20, 1890. Henry G. McMillan, clerk, by Geo. D. Loomis, deputy.

38 In the Third Judicial District Court of Utah Territory.

C. L. HANNAMAN, Plaintiff,
vs.
LOUIS C. KARRICK and THE BAST-MARSHALL MERCANTILE COMPANY, a Corporation, Defendants.

Upon motion of counsel for the plaintiff herein and after notice given according to law to the defendants herein, it is hereby ordered that the said defendants, Louis C. Karrick and The Bast-Marshall Mercantile Company, permit and allow the plaintiff to take copies of any and all partnership books and accounts of the partnership existing between the said plaintiff and the said Karrick, beginning February 3rd, 1886, up to and including the present time, and also copies of any and all entries of accounts and business transactions of the said corporation so far as said corporation has attempted or is attempting to carry on the business of the partnership existing between the said plaintiff and the said Karrick.

Said copies may be made by the plaintiff at any time between the hours of nine (9) a. m. and five (5) p. m. of any and every day until the same shall have been completed, up to and including the — day of May, 1891.

Dated May 19th, 1891.

C. S. ZANE, *Judge.*

Endorsed: # 8430. Title cause. Order. Filed May 19, 1891. Henry G. McMillan, clerk.

39 In the District Court of the Third Judicial District of Utah Territory.

C. L. HANNAMAN, Plaintiff,
vs.
L. C. KARRICK, Defendant.

On motion and by consent of the attorneys for the respective parties, it is ordered that the order heretofore made appointing Robert Harkness, Esq., as referee in this case be, and the same is hereby, vacated and set aside, and upon motion and consent it is ordered that this cause be, and the same is hereby, referred to Samuel A. Merritt, Esq., as sole referee to hear, try, and determine the issues and report his findings of fact and conclusions of law to the court.

Dated May 29th, 1891.

40 In the Third Judicial District Court of Utah Territory.

CHARLES L. HANNAMAN, Plaintiff,
vs.
LEWIS C. KARRICK and THE BAST-MARSHALL MERCANTILE COMPANY, a Corporation, Defendants.

Findings of Fact and Conclusions of Law.

A reference having been made to the undersigned by order of the court heretofore entered and pursuant to stipulation in this cause, and after hearing the evidence introduced by the plaintiff and the defendant Lewis C. Karrick, and trying of the issues in said action, both of law and of fact, and having heard the argument of counsel, and the case having been submitted for decision, the referee herein now reports to the court the following findings of fact, to wit:

41 *Findings of Fact.*

1. That plaintiff and defendant Karrick entered into a partnership agreement at the time, and as stated and set forth in the complaint therein.

2. That on making the said agreement, plaintiff and the defendant Karrick commenced to carry on the business agreed upon, and carried the same on in conformity therewith until about February 1, 1888.

3. That about February 1, 1888, defendant Karrick took forcible, wrongful and exclusive possession of all of said business, stock, partnership, books and accounts, and the premises on which the same were situate, and on said last-named date the defendant Karrick forcibly and wrongfully ejected the plaintiff therefrom, and ever afterward prevented the plaintiff from participating and assisting in said business and performing his part of said agreement and in participating in any way in the profits of said business.

4. The plaintiff in all respects performed his part of said agreement until said last-named date, and ever after said time plaintiff was ready and willing to perform his part of said agreement, and so advised the defendant Karrick, shortly after said last-named date.

5. That the defendant Karrick held the sole and exclusive possession of said business which was taken as aforesaid, from about February 1, 1888, until on or about January 1, 1890, when the defendant Karrick wrongfully sold all the said business to the
42 East-Marshall Mercantile Company, and the defendant Karrick took and appropriated all the proceeds of said sale, and all the capital and profits of said partnership business, and all the partnership books, accounts and assets, and has ever since, and does now retain the said proceeds, profits, books and accounts.

6. That plaintiff has dismissed the action herein as to the East-Marshall Mercantile Company, and makes no claim against said company in this suit.

7. The unadjusted and undivided profits of said partnership are $22,858.18, and also the sum of $99.90, realized after January 31st, 1890, making a total of $22,958.08, unadjusted and undivided profits; from said sum should be deducted $2,005.12, for unavoidable losses occurring after January 31st, 1890; the plaintiff also had put into said business the sum of $5,208.89.

8. That on the accounting between plaintiff and defendant Karrick, had herein, there was due and owing to the said plaintiff, January 1st, 1890, from the said defendant Karrick, according to the books of said partnership, after allowing the said Karrick all he had advanced or put in said business, and every claim he was or is entitled to except the note hereinafter mentioned, the sum of $15,635.42.

That after said January 1st, 1890, the said partnership realized the further sum of $99.90, and one-half thereof, $49.95, belongs to the plaintiff, that included in said $15,635.42, in the sum of $2,616.25, that did not come into the hands or the possession of said defendant Karrick until some time after January 31st, 1890; that there is a sum of $379.50 not included in said $15,635.42, which said Karrick wrongfully *which said Karrick wrongfully* disbursed and for which he is not entitled to credit, the one-half of which,
43 or $189.75, the plaintiff is entitled to; that plaintiff owes the defendant Karrick, on the note mentioned in said partnership agreement, the sum of $5,000, without interest; that adding to said $15,635.42 the sums of $49.95 and $189.75, the amount would be $15,875.12, and deducting therefrom the said note of $5,000, there would be a balance due the plaintiff from the defendant Karrick, amounting to $10,875.12; the interest on $8,258.87, the difference between said $10,875.12 and said $2,616.25, uncollected on January 1st, 1890, would amount to $1,165.41, calculating interest at 8 per cent. per annum, from January 1st, 1890, to October 5th, 1891, and the total amount in principal and interest due plaintiff from the defendant Karrick, would amount to the sum of $12,040.53.

9. That said partnership was never insolvent or heavily in debt,

nor was plaintiff ever owing said partnership a large sum of money, nor was plaintiff ever insolvent, nor was he ever owing defendant Karrick any sum of money that was due during the existence of said partnership; and said partnership was not dissolved while L. C. Karrick continued said business.

10. Plaintiff never deceived the defendant Karrick as to the Yearian business or laundry, or the purchase of either, or misrepresented to him anything regarding the same in any particular, and the defendant Karrick did not rely on Hanneman in making the purchase, but investigated the matter through an independent source.

11. The defendant Karrick was not compelled to take up either of the Yearian notes to protect the partnership, but they were partnership obligations and taken up and paid in the course of partnership business; nor did the plaintiff ever promise to pay either of the said Yearian notes individually.

44 12. That plaintiff at all times and in all particulars, from the commencement of said partnership business until his said wrongful exclusion, attended with due diligence to said business, and was never absent from the same longer than was reasonably necessary, and plaintiff managed said business and took care of the stock in trade, and all the premises and machinery, while he was with the same, with reasonable skill, carefulness and attention, and also kept proper books of account.

13. That plaintiff accounted for all money he expended while East in 1886, and properly entered the same on the partnership books, and any sum he expended other than for partnership business was properly entered and charged against him on the partnership books, and the defendant Karrick was credited and he took interest on such sums until the same were liquidated.

14. That defendant Karrick told the plaintiff to take such sums of money and articles of merchandise as he needed out of the business, and then to deposit or pay again when convenient, and in pursuance thereto the plaintiff overdrew his account in 1886, but in 1887 had a surplus to his credit in the same business.

That defendant Karrick was credited with and took interest on all overdrafts of plaintiff, part of the time at eight per cent. and part of the time at twelve per cent. per annum.

15. The defendant Karrick was not obliged to increase his investments to keep up the credit of said partnership or to meet any overdraft of plaintiff.

16. That plaintiff and defendant Karrick never agreed at any time that the plaintiff might purchase or take defendant
45 Karrick's interest in said partnership business in sixty days or any time or for any sum or on any terms at all; nor that if plaintiff did not so purchase, that defendant Karrick should take the business and pay the debts, or take the business on any other terms or at all, nor that said partnership should be dissolved on the terms alleged, or on any terms, or at all.

17. That plaintiff never acquiesced in defendant Karrick managing the partnership business alone or in selling the same.

18. That plaintiff did not know that defendant Karrick was going to sell the partnership business and did not know of such sale until the same was completed.

19. That the plaintiff did not unreasonably delay bringing suit against the defendant Karrick for any accounting of the partnership business; and the defendant Karrick was at all times fully informed of plaintiff's claim to an interest as a partner in said business according to said partnership agreement, and of the plaintiff's right and desire to participate in the management of said business.

20. That plaintiff demanded of the defendant Karrick an accounting of said partnership business after the same was sold and before the beginning of this suit, but such accounting was refused.

21. That plaintiff and defendant Karrick agreed in open court that the referee herein should receive $25 per day, and that the losing party should pay the same.

And from the above findings of fact the referee herein finds the following conclusions of law:

1. That said partnership was not dissolved, but the same expired in February 3, 1891, by the terms of said partnership agreement.

46 2. That the profits and losses of said partnership business should be divided equally between plaintiff and the defendant Karrick after crediting each partner with his advancements to and investments in the said partnership.

3. That there is due and owing said plaintiff from the defendant in principal and interest on the basis of division stated in conclusions of law No. 2, the sum of $12,040.53, on this date, to wit, October 5, 1891.

4. The said plaintiff is not estopped from asking and receiving relief in this action against the defendant Karrick.

5. That defendant Karrick should pay all the costs of this action, to be taxed according to law, including the agreed fees of the referee herein, amounting to $350.

Dated October 5, 1891.

SAM'L A. MERRITT, *Referee.*

Endorsed: #8430. Title court and cause. Findings of fact and law of referee. Filed October 7th, 1891. Henry G. McMillan, clerk.

In the Third Judicial District Court of Utah Territory.

CHAS. L. HANNAMAN, Plaintiff,
v.
LEWIS C. KARRICK and THE BAST-MARSHALL MERCANTILE COMPANY, a Corporation, Defendants.

47 *Decree.*

This cause having been heard upon all the issues and the findings of fact and conclusions of law, having been duly found and

reported in writing, the referee herein now reports the following decree to the court, to wit:

It is now ordered, adjudged and decreed, that there is due, and owing the said plaintiff, from the defendant Karrick, in principal and interest on this date, the sum of $12,040.53.

The defendant Karrick should pay the costs of this action, to be taxed according to law, including the agreed fees of the referee herein, amounting to $350.00, and taxed at $—.

Dated October 5, 1891.

SAM'L A. MERRITT, *Referee.*

Attest a copy of judgment entered Oct. 7th, 1891.

[SEAL.] HENRY G. McMILLAN, *Clerk.*

Endorsed: #8430. Title court and cause. Judgment of referee. Filed Oct. 7th, 1891. Henry G. McMillan, clerk.

48 In the Third Judicial District Court of Utah Territory.

CHARLES L. HANNAMAN, Plaintiff,
vs.
LEWIS C. KARRICK and THE BAST-MARSHALL MERCANTILE COMPANY, a Corporation, Defendants.

The Honorable S. A. Merritt, as referee herein, in accordance with the order of this court, having reported the findings of fact, conclusions of law, and decree in the above-entitled action, and the same having been heretofore duly filed, and it appearing to the court that the same are correct and should be made the decision of this court, it is now ordered, adjudged, and decreed that said findings of fact, conclusions of law, and decree should be, and are hereby, expressly adopted and made the findings of fact, conclusions of law, and decree of this court.

Done in open court this 7th day of October, 1891.

—— ——, *Judge.*

Attest:

[SEAL.] HENRY G. McMILLAN, *Clerk.*

Endorsed: #8430. Title court and cause. Decision of court. Filed October 7th, 1891. Henry G. McMillan, clerk.

49 In the Third Judicial District Court of Utah Territory.

CHARLES L. HANNAMAN, Plaintiff,
vs.
LEWIS O. KARRICK and THE BAST-MARSHALL MERCANTILE COMPANY, a Corporation, Defendants.

To O. W. Powers and W. C. Hall, the attorneys of said defendant, Karrick, and to the said defendant, Karrick:

Take notice that said court this day has signed and filed its findings of fact, conclusions of law, and decree, and rendered its de-

cision in the above-entitled action in favor of the plaintiff and against the defendant Karrick.

Dated October 7th, 1891.

J. L. RAWLINS,
WALDEMAR VAN COTT,
Attorneys for Plaintiff.

Endorsed: # 8430. Title court and cause. Notice of decision. Rec'd copy hereof Oct. 8th, 1891. O. W. Powers, att'ys for def't. Filed Oct. 8, 1891. Henry G. McMillan, clerk, by Geo. D. Loomis, deputy.

50 In the Third Judicial District Court, Utah Territory, Salt Lake County.

CHARLES L. HANNAMAN, Plaintiff,
vs.
LEWIS C. KARRICK and THE BAST-MARSHALL MERCANTILE COMPANY, a Corporation, Defendant-.

Notice of Intention to Move for a New Trial.

To Messrs. Rawlins & Critchlow and W. Van Cott, attorneys for plaintiff, and to said plaintiff:

Take notice that the defendant Lewis C. Karrick, and on the 31st day of October, 1891, at the court-room of said court, in Salt Lake City, Utah Territory, at the hour of 10 o'clock a. m. of that day, or as soon thereafter as counsel can be heard, will move said court for a new trial in said cause. Said motion will be made and based upon the following grounds and assignments of errors, namely:

1. Insufficiency of the evidence to justify the findings and decision of the referee.
2. The decision of the referee is against law.
3. Errors in law occurring at the trial before said referee and excepted to by the said defendants.

Said motion will be made upon a statement of the case hereafter to be made and served on you and filed and showing:

1. The insufficiency of the evidence to justify the finding and decision of the referee.
2. That the decision is against law.

51 3. The errors of law occurring at the trial before said referee and which were excepted to by said defendants.

POWERS & HILES AND
W. C. HALL,
Attorneys for Defendant.

Dated this 16th day of October, 1891.

Endorsed: #8430. Title court and cause. Notice of intention to move for new trial. Copy served this 16th day of October, 1891. J. L. Rawlins, Waldemar Van Cott, att'ys for pl'ff. Filed Oct. 16, 1891. Henry G. McMillan, clerk, by Geo. D. Loomis, deputy. Powers & Hiles & W. C. Hall, for def'ts.

52 TERRITORY OF UTAH, } ss:
County of Salt Lake, }

In the Third Judicial District Court.

CHARLES L. HANNAMAN, Plaintiff, }
vs.
LOUIS C. KARRICK, Defendant. }

It is hereby stipulated that the said defendant in the above-entitled action shall have twenty days' additional time, or to and including Monday, the 16th day of November, A. D. 1891, in which to prepare, file, and serve a proposed statement on motion for a new trial in said action.

J. L. RAWLINS,
——— ———,
Attorneys for Plaintiff.

Salt Lake City, Oct. 26, 1891.

Endorsed: # 8430. Title court and cause. Stipulation extending time to prepare proposed statement on motion for a new trial. Filed Oct. 26, 1891. Henry G. McMillan, clerk, by Geo. D. Loomis, deputy. Rawlins & Critchlow and Williams and Van Cott, for plaintiff. O. W. Powers and W. C. Hall, for defendant.

53 TERRITORY OF UTAH, } ss:
County of Salt Lake, }

In the Third Judicial District Court.

CHARLES L. HANNAMAN, Plaintiff, }
vs.
LOUIS C. KARRICK, Defendant. }

It is hereby stipulated that defendant shall have ten days' additional time, or to and including the 26th day of November, A. D. 1891, in which to prepare, file, and serve his statement on motion for a new trial in this action, provided the time has not already expired which was before given by stipulation.

J. L. RAWLINS,
WALDEMAR VAN COTT,
Attorneys for Plaintiff.

Salt Lake City, Nov. 16, 1891.

Endorsed: # 8430. Title court and cause. Stipulation for further time to file statement on motion for new trial. Filed November 16, 1891. Henry G. McMillan, clerk, by Geo. D. Loomis, deputy.

54 In the District Court for the Third Judicial District of Utah Territory.

C. L. HANNAMAN, Plaintiff,
vs.
L. C. KARRICK, Defendant.

On motion of D. N. Straup, Esq., appearing for the defendant, moving herein, it is ordered that said defendant be, and he is hereby, allowed until and including December 1st, 1891, within which to file a statement on motion for a new trial herein, and the stay upon the judgment herein is in the meantime allowed.
Dated November 25th, 1891.

In the District Court for the Third Judicial District of Utah Territory.

C. L. HANNAMAN, Plaintiff,
vs.
L. C. KARRICK *et al.*, Defendants.

On motion of Messrs. Powers and Hiles, appearing for the defendant Karrick, it is ordered that said defendant be, and he is hereby, allowed until and including December 7th, 1891, to file and serve a statement on motion for a new trial herein.
Dated November 30th, 1891.

55 In the District Court for the Third Judicial District of Utah Territory.

C. L. HANNAMAN, Plaintiff,
vs.
L. C. KARRICK *et al.*, Defendants.

On motion of O. W. Powers, attorney for defendant L. C. Karrick, it is ordered that said defendant be, and now is hereby, allowed five days' additional time from this date to file and serve statement on motion for a new trial herein.
Dated December 7th, 1891.

Statement After Settlement.

Filed Jan'y 4, 1892. Henry G. McMillan, clerk.

C. L. HANNAMAN, Plaintiff,
vs.
LOUIS C. KARRICK *et al.*, Defendants.

Appearances: For plaintiff, J. L. Rawlins, Esq., and W. Van Cott, Esq.; for defendants, W. C. Hall, Esq., and O. W. Powers, Esq.

56 TERRITORY OF UTAH, } ss:
County of Salt Lake, }

In the Third Judicial District Court.

CHARLES L. HANNAMAN, Plaintiff, }
vs.
LOUIS C. KARRICK, Defendant. }

Statement on Motion for a New Trial.

Be it remembered that the above-entitled action came on regularly to be tried on the — day of ——, A. D. 1891, before Honorable Samuel A. Merritt, referee, appointed by the court by its order duly made and entered on the — day of ——, A. D. 1891, whereby the said referee was directed to hear and decide the whole issue.

At the trial before the referee Messrs. J. L. Rawlins and W. Van Cott appeared for the plaintiff and the defendant appeared by O. W. Powers, Esq., and W. C. Hall, Esq.

57 That thereupon the plaintiff to sustain the issues on his part was sworn as a witness in his own behalf and testified as follows:

I am the plaintiff in this action, and I know the defendant Karrick; have known him something like six years. I got acquainted with him in the store at 142 Main street, Salt Lake City, Utah. At that time Mr. W. H. Yearian and myself were carrying on the business of merchandising, men's furnishings goods and steam laundry. This business had been carried on there possibly as many as two or three years when I became acquainted with Mr. Karrick. I remember the time when Mr. Karrick and me entered into partnership. I don't remember the exact date, but it was about February 3d, 1886.

The business of selling furnishing goods and laundry was carried on by Yearian and me before that time. Yearian owned the furnishing goods business and I owned the laundry business; at that time I had been running the laundry business about two years. When this partnership between me and this defendant was formed we bought out the business of Mr. Yearian. I bought out Mr. Yearian in my own name; that is, the furnishing goods business for the copartnership account of Mr. Karrick and myself; but the transaction between Yearian and myself was in my own name. Mr. Karrick said that he did not wish to be known in the transaction. The transaction by which I came into possession of the two businesses before mentioned was in substance as follows:

I then owned the laundry business myself exclusively. Mr. Karrick used to come to the store and trade, and I was doing his laundry work. He came through the store one day, and inquired who owned the building, if I thought it could be bought, and what rent we were paying for it, and stated that he was looking for an investment, something that would pay him about 8 per cent. interest on his money. I told him in effect that it was Mr. Dinwoody's,

and that I thought he would sell and that it was a valuable property.

58 A few days after that I met him at the Alta club, and I mentioned incidentally to Mr. Karrick that I thought I knew of something that would probably pay him double 8 per cent. interest on the investment; that he could get such interest by buying out Mr. Yearian's business before mentioned. Karrick asked me what it could be bought for. I told him I thought anywhere from $15,000 to $20,000. He then told me to see what it could be bought for, and after that I had some little talk with Yearian. I saw Mr. Karrick every day and he told me to go ahead and buy it as low as we could get it. The stock invoiced between $17,000 and $18,000.

I bought the stock at the invoice price, and he threw in the fixtures, estimated at $2,000. Karrick asked me if I would sell him an interest in the laundry if I bought out the store. I told him I would, and I sold him one-half the laundry business for $5,000. The laundry was valued at $10,000 in our partnership business. After completing his purchase Mr. Karrick and me went into possession of both businesses as partners. About two or three months after that we added a dye-works business. In paying for the Yearian business and for one-half interest in the laundry, Mr. Karrick gave me three checks, one for $1,300, one for $3,700 and one for $15,000. After depositing these checks I gave Mr. Yearian my check for $15,000, and my two promissory notes aggregating $2,000, one payable in thirty days and one in sixty days from that time. After Mr. Karrick and me took possession I remained there in possession with him about two years till about February, 1888, when Mr. Karrick forced me out of the store. The beginning of my difficulties with Mr. Karrick was that he had a chattel mortgage on the laundry for $5,000, money loaned me personally for five years. The $5,000 mentioned in the articles of partnership. There was to be paid no interest by me for the use of that money, my services were to be an offset for in-

59 terest. Afterwards, about the first day of the year he said to me that I ought to pay interest for that money. I told him I thought I ought not, but he insisted. This note and mortgage for the $5,000 personal loan, was to be renewed every year, and I was to go down to Judge Sprague's office, who was Karrick's attorney, and sign the note and interest added. I went back to the store and told him I would not sign it that way. He wrote out a little article on a piece of paper. I have not the paper, it was left with Karrick, the substance of it was, that for value received I was to assign to him my whole interest in the business there including the lease on the property there on Main street to him, that is the assets belonging to the firm of Hanneman & Co. to Louis C. Karrick & Co. I took the paper back to him and told him I would not sign it. He seemed a little bit put out. That day or the next we were standing in the front part of the store and the question of this interest came up, and he became very abusive and said both of us could not stay under the same roof, and that one of us would

have to die. I told him I did not suppose we would; he put his hand in his hip pocket, talked along, called me some pretty hard names and finally pushed me out on the sidewalk; that was about all there was to it; I do not remember all the language he used toward me when he shoved me out of the store, but he called me a son of a bitch two or three different times.

I did not have any control of the business after the first year.

The following letter was introduced in evidence marked Exhibit "A," and was delivered by J. H. Hurd to L. C. Karrick:

"SALT LAKE CITY, UTAH, *Feb. 15th*, 1888.

L. C. Karrick, Esq.

SIR: You will probably remember that under our agree-
60 ment of copartnership I am to give my entire time and attention to the business.

Also that it is provided that I shall have the control and management of the business generally and entirely, except, etc.

I hereby notify you that I am ready and willing to continue in the performance of my part of the agreement and would be glad to have you indicate your wishes in the matter.

C. L. HANNEMAN."

I did not have any control of the books after the first year.

During 1886 I kept the accounts, but after Mr. Karrick had another book-keeper. During the year 1886 I had the general management of the business. In that year our books of account were a journal and ledger. We kept a cash book, of course; whether that one was kept that year I don't remember. This book of accounts shown me is the account kept during the first year. This is the open account, the account was opened for the firm by Mr. E. W. Ruff; this is his handwriting. There is nothing in my handwriting in this book. This is the journal. Mr. Ruff, I think, must have started this in 1887. I had nothing to do with keeping the books in 1887.

Q. This represents the accounts of 1886, though, don't it?

A. Yes; made a journal entry of them to enter in ledger I presume. There are none of the books of 1886 which I kept except this ledger. Mr. Karrick undertook the charge of the books in 1887, after the first of the year. I had charge of the books up to that time. The books show as the result of the business for 1886, a net profit of about $5,900, within a few dollars of it. After Karrick excluded me from the store he had exclusive possession of everything pertaining to the business; that is from about the first of February, 1888, and I know nothing of the accounts of the
61 business after that time. I never consented to a dissolution of the partnership. I held myself in readiness at all times to perform my part of the agreement of partnership. I remained in Salt Lake City all the time after February 15th, 1888; I have never been out of this city since that time as I remember. From my observation from the volume of business in 1887, there was an

increase in that year in every month over the volume of business in 1886, both in the store and laundry. The volume of business in each department, store and laundry, was larger in February, 1887, than in February, 1886, and so in each month throughout the former year. I know nothing personally about the character of the business in 1888 and 1889. After I was excluded from the store in February, 1888, the business was carried on in the same way, the signs remained the same, the laundry wagon carried the same sign, and the advertisements in the newspapers continued the same up to about the middle of May, 1888, some three or four months after I was excluded from the store, and the laundry wagons had the name of Hanneman & Co. on them for a year or more after that time. Mr. Karrick parted with the possession of the whole business, I understand, about the 1st of January, 1890. During the existence of this partnership, I and Mr. Karrick obtained a lease from Mr. Dinwoody. This paper is the lease. I am familiar with the premises described in this lease. The lower part was occupied by the store. The building in the rear was occupied as a laundry. It was so occupied during all the time I was there, that is up to the time I was excluded from the store. The rooms in the upper part of the building were rented out for offices. The rent was collected by the firm whilst I was with it. I did not get any of that rent after I was excluded from the firm. The rental of the upper part of the building was $46 a month.

62 Plaintiff, by his counsel, here offered in evidence, which was admitted, a certain paper-writing, the substance of which is as follows:

This was a lease dated September 27th, 1886, from Henry Dinwoody to Hanneman and L. C. Karrick, being the firm of Hanneman & Co., and being a lease for the property occupied by the business of C. L. Hanneman & Co., for five (5) years, com-encing March 1st, 1887, and expiring March 1st, 1892, the rental being the sum of $190 per month, which lease was executed by the lessor and lessees and duly witnessed and acknowledged.

The witness was here shown a letter marked Exhibit "C," and in respect thereof testified:

This is my signature to this letter, a letter of January 10th, 1890. I remembered to have mailed a letter of which this is a copy to Mr. Karrick on January 10th, 1890. It was enclosed in an envelope with proper postage paid on it. It was deposited in the post-office, directed and addressed postpaid to Mr. Karrick.

Thereupon counsel for plaintiff offered the said letter in evidence, to which offer defendant Karrick objected, and thereupon the referee overruled said objection, to which ruling of the said referee defendant Karrick then and there duly excepted.

EXHIBIT "C."

"SALT LAKE CITY, UTAH, *Jan. 10th*, 1890.

L. C. Karrick:

I am informed that you have disposed of all the assets and property belonging to the firm of Hanneman & Co., and as you have not consulted me nor accounted to me in any way in respect to this business or the purchase of it, I now request that you account
63 and pay over to me my proportion of all moneys derived in any way from said business or which ought to have been derived from it, together with all damages which I have sustained by being excluded by you from any participation in the management of said business.

C. L. HANNEMAN."

Continuing his testimony witness said: I never received any reply to that letter, Karrick never accounted to me in any way after I was excluded from the business in 1888.

On his cross-examination plaintiff testified as follows: I did not in my direct examination say that — of a journal is in my handwriting, I did not keep those books. You are not correct in understanding that no part of this was in my handwriting, page 2 of June 1st, in this book, and that which follows is in my handwriting; also page 3 and page 4, and page 5 and page 6, and page 7 and page 8, and part of page 9 are parts of the journal which are in my handwriting. That set of books were opened about January 1st, 1887, I suppose. Mr. Ruff opened the books prior to this opening. That book there had been a journal; kept there was also a ledger and cash book, a regular cash book. The cash book was not a large one such as has been produced here; it was a little small book. I don't really remember what kind of book the journal was. I remember we had a journal; it might have been called a day book. The day book was used to make the entries of the transactions as they occurred prior to entering them in the ledger. This ledger here is not, I think, the ledger kept prior to January 1st, 1887. I don't think I see my handwriting there. All their first entries appear to be made by Mr. Ruff, and he was not in the store, if I remember right till January, 1887; there is none of that that is my writing. I don't think that that is the ledger. Mr. Karrick employed Mr. Ruff to keep those books.
64 I employed Mr. Ruff first, not to keep the books, but to close up the business for the year 1886. Karrick did not say that he had better go on and open a set of books. He said he wanted to keep the books himself, but that he was a little rusty, and he wanted to hire a book-keeper for a few days till he could get his hand in it; so Mr. Ruff was hired, and he kept those books. I don't know what this journal was made up from. I suppose it was made up from the books that were kept in 1886. The first entry in the books is Mr. Ruff's handwriting and he did not come in then— this says February 1, 1886, in Mr. Ruff's handwriting. He did not

come in till January, 1887. On the next page there is an entry in my handwriting. This entry was made from bills. I don't remember whether I took those entries on this page off of bills; it looks so there; or rather I copied them from another book; I don't remember; I don't know positively where I got them from; I don't know what that book was made up from; I suppose it was made up from the books of 1886; and part of it is in my handwriting. This partnership to which those books relate began about the 3d of February, 1886, and as I have stated, the first suggestion concerning a partnership came from Mr. Karrick to me. It is a fact that at that time we both took our meals at the Alta Club and sat at the same table. He told me about that time that he had sold a mine for a large sum of money; that was before the partnership; I did not first call his attention to the fact that the laundry I was in was a good paying business. The first talk concerning the partnership was not about the purchase by Karrick, of a half interest in that laundry, and he did not tell me, after looking at it that that would hardly make a large enough business; that if something else could be added to it, he would not have objection to going in. I did not represent to him that the laundry was in excellent shape or that it was worth $10,000.

65 I presumed I told him there was a chattel mortgage on it to W. S. McCormick. There was such a mortgage. I think it was for $2,500. I don't remember whether I informed him of it. I presume I did. I borrowed $5,000 of him personally, but not with the understanding that part of it was to pay off the McCornick mortgage. There was no understanding whatever. There was no other chattel mortgage on that laundry property. Tom Langtree did not have one thereon for $1,100 or $1,200. At the time Karrick bought in I paid off the McCornick mortgage, so that that was left clear. There was no other indebtedness at that time standing against the laundry property. I did not, before we went into the partnership, I did not after discussing with him the advantages of his taking a part interest with me in the laundry, say to him one day at the club that the Yearian business could be purchased for about $15,000. We did not then agree that we would go into partnership or that he would loan me personally $5,000 for certain purposes, or that he would pay me $5,000 more for a half interest in the laundry business, or that he would put to my credit at the bank $15,000 to purchase the Yearian property. He did afterwards put $15,000 to my credit at the bank. He gave me a check for it; to be deposited at the bank to my credit to be paid over as I saw fit; it was not afterwards learned that the property could not be bought for $15,000. It is not a fact that the $15,000 was paid before the purchase was closed, or that I went to Karrick and told him it would require more money, or that it would require $17,250. Mr. Karrick gave me the $15,000 after the trade and the trade was for $17,250.00. I did not say that it was all right, that I would pay the extra $2,000 myself, and I did not pay it by giving my notes to Yearian, one for 20 days for $1,000 one for 60 days for $1,000. Those notes were to apply on the $17,250, and I had

$250 in cash. I identify the two papers marked Exhibits "D" and "E" respectively as the two notes I gave Yearian for that $2,000. The note for $5,000, which is marked Exhibit "F," is the note which I gave in accordance
66 with the clause in the partnership agreement. I went away a short time after the partnership was formed. I went east to Chicago, Milwaukee, Cincinnati, and Evansville. I went on firm business to buy goods and to look up the laundry business and dye works. Before I went east, me and my partner had an agreement to add dye works to that concern, and I went east to purchase a plant. It was not agreed that I was to be gone only two weeks. I cannot say exactly how long I was gone, but I don't think it was six weeks. I went a few days after we had gone into the business. It was in February, a few days after we entered into possession. I do not remember the date that I got back. When I got back I found Mr. Karrick in the store taking charge of things. He did not inquire of me why I had been gone so long, and I did not decline to give him any explanation. I presume that the entries at the foot of page 1, between the red lines and on page 2 down to the end of the red line, are the amounts expended for dye works and other stuff on that trip east; the amount is $2,049.10. The entries are in Mr. Ruff's writing. I don't know whether that includes all the expenses I was to on that trip for the firm. That is all the item shows. I don't know whether I can show anything else till I have examined the books. I don't know whether I checked out $3,848.62 under date of March, as appears by page 3 of the cash book. That is not my writing. It is not my recollection that I checked out on that trip for the firm $3,848.62. I did not so check out that sum. I did not check out $800 more than my account showed I purchased; I did not fail to account to the firm for $800. I can state the transaction. It was this: Mr. Karrick did not want his name known in the business at that time. All the money I drew was in my own name, and when I came back I had an overdraft of about $3,700 or $3,800. Mr. Karrick asked me what my overdraft was and I told him, and he said to draw a Hannaman & Company check to pay it off, which I did. It is a fact that $3,848.62 represented what I expended on that trip east; and it is a fact that all the account I rendered to the firm was the amount set out here in the books which amounts to $3,049.10. From the time I returned, or during the year 1886, I drew some money from the firm. In April I drew $48.50; in May 144; in June, 1886, $152.25;
in July, 1886, $175; in August $111. I don't re-
67 member that the amount in September, 1886, was $294; though I see it there in the book. In October, 1886, $77; in November $153; in December $270; some of this, however, is merchandise. There might be a difference between merchandise and cash. I do not know that the entries to my credit, the first entry for $250 was put on the $17,250. It was February 1st, about the beginning of the partnership. I don't remember on what account it was paid, possibly it was paid on the $17,250. I expect it was; I don't know. That is in Ruff's handwriting. I don't know where

he gets it from. This is one of the books of the concern. It is about four years ago and in my handwriting. I did pay $250 to secure this contract, simply because I paid $250. I could not say that was this item. From April down to the items marked February "there was in small items cash paid in by me the sum of $275.60." The next item is "by investment in laundry plant." That is $5,000, and is the one-half interest in the laundry plant. Then there are "sundries," $1,349.10 for purchases made by me on the eastern trip. Then commencing July 3d to December 31st are certain cash items amounting to $214.56. That makes during that year credits outside of those investments, $490.16. I am credited also "by sundries," $3,131.87, which, I presume, to be half of the profits for the year 1886; I presume so; this was Mr. Ruff's writing, I think. The concern was running at a profit to each of the partners for and during the year 1886 of $3,131.87. In the commencement of the year 1887, I was charged up with that $3,131.87 because, I presume, Mr. Ruff was instructed to charge me up with that in order to credit the stock account with it, as I was to leave the profits in the business. It is not a fact that there was not any profit, or that that profit was a fictitious profit, or that there were certain things carried over that I was credited up with. It is not a fact the concern was running at a loss instead of profit. I guess it was perfectly solvent
68 on the first day of January, 1887. It has been running at a profit ever since. There was not necessarily money on hand that could be divided. There was $20,000 or $25,000 worth of merchandise and $10,000 worth of laundry plant; that was counted money, or something else. I don't remember that we owed McCornick $8,793 in the first part of 1888; I don't remember that we owed him. It is a fact that we were overdrawn at McCornick's bank. Our limit was not $5,000 for overdrafts; I don't know that we were overdrawn $8,793; I don't know that a draft for $3,150 of our concern was dishonored by this bank at that time; the first notice I had of it was in that letter right there, although I have been managing the business all that previous year and had charge of all such books as were kept, and drew other checks of the concern myself and also made the bills of Hanneman & Co. in 1886, some of them, and I had the bills, such as were paid, and drew its checks on the bank, and yet I did not know that, and that draft was dishonored, I never heard of it till the letter came. All I ever heard of this dishonored draft is in this letter; I see it there; I did not know what the draft was for. Never heard of it, one way or the other. I did not know who the draft was from. I knew we were overdrawing from the bank all that summer. We always overdrew. Always had an overdraft there. I believe that whilst I was east at Chicago and other towns, my first note to Yearian became due. I did not pay it. Mr. Karrick said he paid it. He was credited with the amount of it. I don't know whether Yearian took the two notes I gave him and discounted them at the bank. I never understood that to be the fact. I have never seen either of those notes since I got them till today. Mr. Karrick said he would pay it or that he did pay it. He said he had money and

might as well pay it. He took up this note. I did not know that it was discounted at the bank. I do not know that he
69 said he had better take it up than to have it running at the bank, as that might hurt the credit of the firm. I paid my proportion of the expense of purchasing the dye-works machinery in addition to the $5,000, the value of the laundry, and the $2,500 cash by the charging the dye-works machinery up to the business. That was charged up to the business. It is not a fact that after the partnership paper was signed Karrick and I agreed that I should go to Chicago and purchase the dye-works machinery, or out of that $5,000 that he loaned me, independently of the $5,000 which he gave me to put into the business, I was to pay my proportion of the dye works and put it into the business clear. We talked of adding those dye works just about the time we went into possession of the business, after we made the articles of copartnership. So that we should have three departments, the furnishing goods, the laundry and the dye works. The accounts of each department were kept separate, and at the end of each year we could tell how each department stood. During the year 1886 I had full charge of all three departments. I don't remember whether Mr. Karrick at the end of 1886 asked me for a statement of the business for that year. We took the inventory, as is customary, about the first of the year. I don't remember whether the merchandise was to be increased any or not. I don't remember; it has been a good while ago. I did not render him any statement about that time. He looked over the books. The books were made up and he examined them. I don't know whether it is these books or others that we are referring to. There was a statement made up by Mr. Ruff. That showed that the concern ran at a profit. At that time Karrick's attention was called to the fact that whilst I had given myself credit for an expenditure of $3,049.10 for sundry items on my trip East, I had in fact on that trip drawn $3,848.62. I don't know that he asked me to explain where that $800 had gone. I did not
70 fail to give him any explanation as to where it had gone; nor say to him that I could not. He did not ask me if I had not used the company's funds for my own private purposes. I do not remember that he said to me that I was a defaulter to the extent of nearly $800. And I did not answer him saying that I was not a defaulter and that I had used the money and could not account for it. I don't remember any conversation when I first came back wherein he said to me, that if I had got into any trouble and used the money it would have been all right if I had explained it. I did not say to him or to any man, that he, Karrick, had had the most implicit confidence in me, and that I thought that I could have made it good within a year without his finding it out. I had not at that time drawn out $2,200 out of the concern contrary to our agreement.

Q. There was $799 that you drew out on the Chicago trip, was there not, and there was about $1,400 that you drew out during the years? I will put it in a different form, and ask you whether you

had not drawn out the amounts that I have named, less $490 of small amounts there that you are credited with?

A. Yes sir, I drew those amounts, I suppose.

Q. And that amount was contrary to your agreement, was it not?

To which latter question the plaintiff by his counsel objected and the said objection was sustained by the referee, to which ruling of the referee defendant then and there duly excepted. Continuing his testimony plaintiff said: I did not know and was not aware all that summer that I was drawing out money contrary to our firm agreement. Mr. Karrick did not call my attention to it at that time.

He did not call my attention to the fact that I had drawn out
71 something like $2,200 or that he had paid $2,000 more than I had agreed to pay, or that I was some $3,400 or $3,500 behind on those matters. During 1887 Karrick had the books kept by Ruff. I did not figure up again about January 1st, 1888, before this trouble took place between us. I don't remember whether the books showed, on the 1st of January, 1888, that the stock and fixtures amounts, by inventory, to $20,150.00; I think the fixtures were not counted. Not counting the fixtures we started in with $17,250 of stock, which, up to January, 1888, had increased to $20,150.00. I don't remember whether against this increase of $2,950 there was an overdraft on the 1st of January, 1888, of $7,000 at the bank. I don't remember anything at all about it. I cannot say that there was not an indebtedness here in the city amounting to $6,000, or an eastern indebtedness amounting to nearly $4,100; I could not state any amount, because I don't know. The concern at that time had not lost over $9,000. I don't know whether the store was run at a loss of $4,919 in 1887. I don't know anything about it. I don't know whether the dye works were run at a loss. I don't know anything about the books. I think the laundry run at a profit. I can remember that the laundry run at a profit better than that the dye works and store run at a loss, because I could keep track of it. I know the laundry paid. I can testify only to that part which made a profit. I don't know that the laundry profit was about $2,700; nor do I know that there was a net loss for the whole concern of $3,500 for the year 1887. I don't think that the concern was largely in debt; nor that it was insolvent. I sold goods in the store during the year 1887. Mr. Karrick was not there all the time. When he was not there Mr. Pierce and me managed the store. Under our contract of partnership I was to have the sole management, except as
we agreed not to. I never at any time agreed to give
72 up the management to Mr. Karrick because he wanted to keep the accounts and look after the finances and the books. He said he was not doing anything and he could just as well keep the books as not. He did not tell me that he was not satisfied with my management. It is not a fact that on the 1st of January, 1888, the stock of that concern was in bad condition, or that out of seven thousand pieces of underwear there was not one hundred but what was broken and in an incomplete condition. I don't know that

there were dozens of knit jerseys jackets on hand, five times more than the trade demanded, or that the institution was compelled to sell those off at a loss. I was not there after the 1st of February, 1888; I don't know what they sold. There were not a hundred dozen shirts in the cellar that had been left there and allowed to turn yellow. I never heard that there was a large number of percival undershirts that had been rejected and thrown under the counters till I saw the cross-complaint in this action. The balance of the stock there was not in bad condition. I could not say that I had more particular charge of the laundry in the year 1887. I do not know that I paid more attention to the laundry than to the store. I was in and out of both places. I can give a more definite idea of how the laundry was run than the store because the laundry business was footed up every week, the amount of business done, and I had a pretty good idea. We kept track of the expenses and the receipts of the laundry business every week, so that we knew what the profits were every week and every month. A man cannot tell the expense, receipts and profits of a store every week like he could the laundry business. It is not a fact that under my management the business got into bad condition. In the spring of the year the ground is thoroughly soaked with water and of course all wells and cesspools rise a good deal higher and as a natural consequence there is more water in the cesspools in the spring of the
73 year than at any other time. I never heard Mr. Auerbach or Mr. Barr make serious complaint against any nuisance occasioned by our cesspools. I don't know that I dug a cesspool or that one was dug under my direction in 1887. I did not dig a new cesspool and then dig a channel from the old one to the new and let the water rush in and nearly drown a man who was at work there. I did not direct it. Mr. Elias Morris was the man who had charge of the cesspools. Afterwards Mr. Karrick took charge. He claimed he was a mining man, understood the business of mining. The machinery was not in bad shape. The laundry had not got into such condition in the balance of 1887 and on the first day of January, 1888, that more money had to be put into it or else it would be closed down. We had not any steam ironing machine at that time. We did not do all our ironing by hand. All the plain wear was ironed by a steam mangle. Mr. Karrick did not have a talk with me in November, 1887, about the shape things were in nor did he call my attention to the way I had let the cesspools run through the summer, nor to the fact that the machinery was in such shape we had to close down, or that I or we had got to make some arrangement about cesspools or the neighbors would indict us for nuisance, nor did he say that things had grown so under my management that either he would take the concern or that I must buy him out. None of those propositions were made, as I remember. Nothing of that kind was said as you say it. I don't know whether I said to him along in November or December that I was willing to buy him out. I did not ask him to give sixty days' time to raise the money, and he did not say that he would give that much time. There was no talk whatever or agree-

ment that if I failed to raise the money within sixty days' time or any time that I would step out and let him take the business, he to assume all the indebtedness of the firm. There was no talk of that kind whatever. It is not a fact that at the end of
74 sixty days I came to him and told him I could not raise the money to buy it, nor did he then say that I must keep my bargain and turn over the business to him. I did not then refuse to do it, and no quarrel took place on the sidewalk about that. I did not say then nor at any time that if I failed to raise the money within any time that he might take the business if he would assume the debts. I refused to renew the chattel mortgage at the end of that sixty days on his proposition that I should pay interest, but on that ground only. The chattel mortgage Sprague prepared did not call for eight per cent. or any interest at all. I did not refuse to renew the chattel mortgage whether it had any interest or not. I did not refuse to sign on the ground that he was claiming that under the partnership he had made, the partnership was dissolved. I did not claim at that time that I was going to give up the management and that consequently I would not sign the mortgage if he was going to insist on my getting out. It is not a fact that immediately thereafter the firm name of Hanneman & Co. was taken down and the name of L. C. Karrick substituted. I did not see the letter-heads or bill-heads whether they were changed. I did not go to the store after that. All I did toward taking charge or offering to take charge of the business is what has been offered in evidence in the letters here. Some new machinery had been put in the laundry from the time I first went in with Karrick up to the time I went out. Some washing machines and some machinery in connection with the boiler, and the heating apparatus, pumping and so on. I did not keep the accounts in the store on slips of paper. I know Belle Green. She worked at the store at that time. I presume she
75 had a book to enter the accounts in. I don't know what kind of books. I don't remember whether I ever examined them. I was managing the business in 1886. I say she had books. I may have made memoranda on scraps of paper of cash received and thrown it into the drawer of the desk where she used to work. That is not the way the cash accounts were kept. That is not the way other accounts in the store were kept. It was not the uniform rule to make cash entries on scraps of paper and throw them in the drawer. The money drawer was in the tall desk where Belle Green used to sit. I paid Dinwoody rent for the store. I paid him rent there off and on for ten years. I did not pay him any rent after I left the concern of Hanneman & Co., nor never tendered him any. Since January 1st, 1890, the upper part of the store building brought forty-six dollars per month rent. It has been paid to me. The statement I made out there and sent to them shows it just as it was. The writing in the book which you now show me is mine. Turning to about the first of February, 1886, and looking from there on I see that it is in my handwriting. From page 66 up to and including page 99 it is in my handwriting. Starting with page 100 under date of February, 1886, it is a

cash account and running from there on it is in my handwriting and in Mr. Long's. Mr. Long was a clerk there at the store. Commencing on page 111, under the head of cash, the ha-dwriting is George Thackrah's, and his handwriting continues to page 119. Then commencing again on page 121 under date of 1887, the writing is mine, which continues to page 123.

The last-mentioned book was admitted in evidence marked Exhibit "G."

I first learned that Karrick had transferred the business to Bast-Terry Mercantile Co. a few days after the transfer. It was along the latter part of December, 1889, or the first of January,
76 1890. Before that I saw the sign of L. C. Karrick over the store. I told you yesterday that there was no mortgage against any of the stock payable to Thomas Langtree. The note which you show me signed by myself and Yearian for $111.80 was paid in full February 27, 1886. That indebtedness was not against the laundry.

The said Langtree note was here admitted in evidence marked Exhibit "H." Here insert said note.

Witness continuing, said: You asked me if there was a chattel mortgage on the property for $2,000 to Thomas Langtree if I remember right. This indebtedness did not exist against the business. Not a dollar of it existed against any part of the business. I said also that there was not $2,000 due to Wilson Brothers, of Chicago. There was an account of about $1,000 that I owed Robert Taucy; I did not owe Wilson Brothers anything. This note, which is shown me, payable to Taucy, is for $2,000 and signed by me and is endorsed by Hugh Wilson, of Wilson Brothers.

Thereupon counsel for plaintiff objected to the introduction in evidence of the said note, Exhibit "H," which objection was sustained, whereupon counsel for defendant then and there duly excepted.

Continuing, witness said: I never received any letter or communication from Mr. Karrick since the time I left the store. I don't know how it was that the articles of copartnership state that the capital stock should be $25,000, when the Yearian business cost $17,250 and the laundry $10,000. I don't believe I could state definitely whether it was ascertained that the stock owned by Yearian would cost $17,250 after Karrick had signed the articles believing it could be bought for $15,000. I was under the impression that they found out the amount definitely, but I could not be positive.
It was not understood at any time that the Yearian stock
77 could be bought for $15,000. I never told Mr. Karrick that I would take care of the $2,250 myself, that being the difference between $17,250 and $15,000, if he would put in the $15,000 in accordance with the contract as signed. The way I come to pay the $250 cash is, that I made the trade with Mr. Yearian in the evening, and in order to bind the bargain I simply gave him a

check for $250 to carry it over till the papers could be made out. I did not make out the notes at the same time. I think they were made out at the time the money was paid over. I gave the notes for this reason: There might not have been anything in it, but I thought a couple of thousand dollars; there might be something against the stock of Mr. Yearian some way; if we were owing him a couple of thousand dollars, it would be a drawback for me. It is a fact that there had not been placed in my hands sufficient money to cover what the stock called for and I had to give the notes to cover the difference. I purchased the dye plant in Chicago, and most of the goods were bought in Chicago. Before I left for the East I put Mr. Frank Long in charge of the store, and J. W. Henry and John Brooks had charge of the laundry while I was gone. I don't recall that at that time there was an overdraft at McCormick's bank when I left. I did not go to the bank to ascertain if there were such overdrafts before I left. I left no one with authority to draw any money or sign any checks. When I went East Mr. Karrick went on the same train to St. Louis. He said he should be gone about two weeks, when he would return and look after the business. I did not tell him I should not exceed two weeks. I left the business in charge of the clerk and the men employed in the store and laundry. I never paid any part of the $5,000 mortgage showed me yesterday. And I never paid any part of the two $1,000 notes paid by Karrick to Yearian except as he was given credit for the amounts. That is the only way they were ever paid.

78 On his redirect examination witness said: The petit cash book was a book that I used to enter the cash items into preparatory to putting them into the general ledger and cash book you see, copied from the merchandise sales book, from the laundry cash book and the dye-works cash book, and then copied from the check book and pay-roll book and entered them into the book in order to have the items properly arranged so that I could enter them. I entered them every two or three days. It just depended upon the time I had. I generally entered them on Sunday. I was very busy from early morning to 10 or 11 o'clock every night; could not enter the accounts during the day, as I would be interrupted every few minutes. I wish to explain that McCornick's mortgage by saying that I paid off the note and mortgage December 31st, 1885. I don't just remember who I paid it to, and they said they would have it cancelled. It was cancelled afterwards. I did not keep the books in 1887. I cannot tell how it is that part of the books for 1887 is in my handwriting.

There was no mortgage or claim of any kind on any property that I had or had interest in, never was any except the McCornick mortgage, that was only a lien or claim on any of the property. I gave Mr. Langtree an individual note simply. I never gave any chattel mortgage except the one that McCornick held. The note which I gave to Langtree was paid February 27, 1886. (This note is in evidence marked "Exhibit H.")

Here insert note.

Continuing plaintiff said: The Taucy note which was endorsed to Wilson, was an individual note, if I remember right. I gave that note to Taucy. Wilson was a relative. I did not know that Wilson had the note, I gave the note to Taucy. The Taucy note was paid off about the time I paid off the Langtree note, the fore part of 1886. There was no individual note connected with
79 it, just my individual note. When I purchased the Yearian business I gave Mr. Yearian two notes for $1,000 each. Mr. Karrick knew about those notes, and that they were for the unpaid purchase price. I told him about it immediately.

The REFEREE: You mean Mr. Karrick by "him"?

Yes; Mr. Karrick and Mr. Judge Sprague drew up the bill of sale. I think it was, and the agreement between Mr. Yearian about his not going into business here for a term of five years. At the time I made that purchase Mr. Karrick was credited with $17,000 when the books were opened about the last of March, or the 1st of February, I mean.

The first Yearian note was paid whilst I was East. Mr. Karrick paid it. I did not tell him to pay it before I left. This note that was due in sixty days, was paid by Mr. Karrick before it was due. I did not ask him to pay it. He told me he had the money and might as well pay it off. I was East six weeks. When I returned Mr. Karrick acted pleasantly towards me. He said nothing about my having been gone too long.

The first I heard about his dissatisfaction on that score was in his complaint or answer, whatever it is. I do not remember that he mentioned it in 1887. I was invited to Mr. Karrick's wedding in 1887, and also my wife. I was treated nicely on that occasion. There was then no expression of dissatisfaction on account of my being gone too long whilst I was East, early in 1886.

When I was East in the winter of 1886, what money I drew, I drew on my own private account. I did not sign the firm name to any draft whatever. Whenever I drew money, I drew it on my own
80 account, in my own name, C. L. Hanneman, and the money that was taken in the store in the business while I was East was deposited in the bank of McCornick & Company, and the pass book of course, Hanneman & Company. This money was deposited entirely as it was taken in from time to time; in that way remained there. I never drew a dollar of it, nor a cent, while I was gone. After I came back Mr. Karrick asked me what my overdraft was at the bank, and I told him it was, I think, $3,600. He then told me, "You had better draw a check on Hanneman & Company, and pay it off." He did not command me, or anything like that, but suggested we had better do so. At that time I think we had — and some $1,571 and some cents credited to the account of Hanneman & Company to meet this check, that I would draw to pay off my account, and the $2,000 and $1,500 that was there would just meet that check.

Any money that I may have drawn, more than was expended in the business, was charged to me. I know Mr. Karrick drew interest. He was credited with it. When I returned from the East, I

returned as having been expended on firm business a little over $3,000. In 1886, Mr. Karrick told me that whenever I wanted money to draw it. That is for my personal expenses. He never said any time to me about paying money in. In 1886, I drew more money than I had in. I was charged with interest, at the rate of 8 per cent.; no, it was 12 per cent., 1 per cent. per month. Mr. Karrick never said anything *thing* to me about my having drawn out more money from the business than I had put in. The dye works were paid for out of the business, they were paid for out of whatever I expended on my trip. That amount was $3,000. I was absent from the business only two or three days in 1887. I went East in the spring of 1887, and was gone about two weeks if I remember right. That was all I was absent, I believe, except
81 that I went to Ogden about the first of the year. When I was in Ogden, I was on firm business. In 1886, I looked after the cesspools personally. Mr. Karrick attended to them in 1887. At the time the men came near being drowned, both of us were attending to them. Mr. Karrick spoke about attending to the cesspool, he said he had a good deal of experience under ground, and I was therefore very glad to turn them over to him. I went East in 1887 to get married. Mr. Karrick knew this. He made no objection. The objection which I made to the mortgage drawn up by Judge Sprague was to the paying interest on the $5,000 which Karrick loaned me.

I forgot whether the interest was mentioned in the note or mortgage; don't remember that I objected to anything else. I did not sign the note or mortgage.

The name of C. L. Hanneman & Co. was changed to L. C. Karrick, successor to Hanneman & Co., about May, 1888. Before this time the store had over it just Hannaman & Co. I never received a letter from Mr. Karrick dated May 6th, 1888. I never saw it till I saw it in the book handed me.

I took up the note which I gave Lan*k*tree and the note I gave Taney when I paid them.

Q. What did you do with them?

A. Well I had—there was three drawers in the safe; a couple of them were used for the store. I don't remember whether there was four or five; a couple of them were used for the store, two or three, and Mr. Karrick had a private drawer and I had a private drawer, and I kept my private papers in that drawer. These notes were in that drawer. In my private drawer.

I never gave those notes to Mr. Karrick. After I was excluded from the store I made an effort to get those private papers. I spoke to Mr. Chaney, but never spoke to Mr. Karrick.
82 I spoke to Mr. Chaney. He was book-keeper. I did not look in the safe for my private papers till Karrick sold out. When Bast, Terry & Co. got in there I met Mr. Bast, who was president of the corporation company. I did not look in the safe for my private papers.

Q. When was it you applied to Mr. Chaney?

A. Well, before that I had the book that had some private ac-

counts in it; laundry accounts, private books, that was there in cashier's office. I asked Mr. Chaney for it. He did not know anything about it, so I never got it.

Q. You never saw them until they were produced the other day?

A. Not that book. I never saw that book.

Q. You mean those two notes.

A. Oh, no, I never saw them in there after I put them in the drawer.

Q. When did you ever get any of those private papers that were left in that drawer outside of those that were produced in court?

A. About two weeks ago.

Q. That was the first time you had ever gotten them, was it?

A. That was the first time I got them. I applied for them to Mr. Bast, and told him that I had a private drawer in there and I would like to get the papers. I asked him if I could go in there and get them. He said certainly. I asked him if he would speak to the cashier to allow me and he said certainly. I went in there and he introduced me to Mr. Terry. I asked Mr. Terry about it and he said Mr. Chaney had those papers and he referred me to Mr. Chaney.

83 Mr. Karrick is credited with $17,000 as the cost of the business. On page 19 of this book I am charged with interest on the amounts which I overdrew in 1886. I am charged at the rate of 8 per cent. per annum. These entries showed that C. L. Hannaman had paid and L. C. Karrick had received interest on all advancements L. C. Karrick has made on all overdrafts of C. L. Hannaman.

Witness continuing, said: On page 37 I am also charged with interest at an increased rate from what I am charged on page 19, the increase is from 8 per cent. to 12 per cent. per annum. The amount is $26.65. On page 58, Mr. Karrick is credited with interest. The total amount he is credited with is $325. This interest charge is the interest on overdrafts, and the amounts paid by Karrick over the $15,000.

Mr. Karrick, February 2, 1888, drew the check for $3,150 that was dishonored by McCornick & Co.

Mr. Chaney and Mr. Pierce took the inventory of the business in 1887, or the bulk of it. I invoiced some of the goods; that is all, I did not do anything with the books.

The books belonging to Hannaman & Co. show that on December 5th, 1887, C. L. Hannaman paid into the said business in cash the sum of $854.60.

On his cross-examination plaintiff said: Mr. Karrick did not tell me on my return from the East, that he had been compelled to become responsible at the bank for my overdraft. He did not tell me that the bank would not honor my overdraft till the bank had assurances from him that it would be paid. The overdraft was something like $3,600. After I went out of the store, in May, 1888, I went into the real-estate business. I remained in Salt Lake City and continued in that business up to the present time.

Q. For what purpose did you devote the money which you realized on the Robert Taucy note, did it go into this business?

Counsel for plaintiff objected to this question on the ground that it was irrelevant. And thereupon the referee sustained said objection, and thereupon the defendants then and there, by their
84 counsel, duly excepted to said ruling of referee.

I have never found the answer to the letter, Exhibit "B."

I never have seen any answer from the Bast-Terry Mercantile Company to this letter which is shown me.

On his redirect examination plaintiff said: After I was excluded from the store I opened up a real-estate office. I was excluded from the office February 10th and opened the real-estate office in May. I would have been glad to have gone ahead and performed my part of the partnership agreement with Karrick. I never received any information from Mr. Karrick after my letter to him that he was willing to permit me to go ahead and perform my duty under the partnership agreement. I was in the city all the time. I went into the real-estate business May 4th, 1888.

Thereupon plaintiff called as a witness LOUIS C. KARRICK, who being sworn, testified as follows: This journal which you show me is I suppose a book which contains accounts of this business, and in it appear entries from February 1st, 1886, to January 31st, 1890. That is the book marked journal containing entries from February 1st, 1888, to January 1st, 1890. That book is one of the books representing the business between those two dates, but I don't think the entries were made at the commencement of the business. They were transferred to this book at a later time from other books. The two books marked Ledger, to which my attention is called, contain accounts of this business. These are the general ledgers containing accounts of this business. There are also some petty ledger accounts. The book marked Ledger, Troy Steam Laundry, contains accounts relating to the business of the laundry. I think there was an older ledger than that; this contains the balance from the other
85 ledger. These books are the books which contain the accounts of this business either according to original entry or by transfer from some other book.

When I closed up the business and sold out in 1890 I tried to collect the proceeds of the business. I placed the receipts to my private credit at McCornick's bank I believe.

Thereupon plaintiff called as a witness in his own behalf HARRY R. BROWN, who being sworn, testified as follows:

I reside in Salt Lake City; have lived here two years. I am an accountant. Have been a professional accountant since I have been in Salt Lake City.

I have had a good deal of experience, what experience would be pretty hard to tell. My experience as a book-keeper dates from the past twelve years. I have had various experience in all kinds of business. It would be impossible for me to tell, or designate all the

firms I have worked for. In the city here I have had business with one Gus. Holmes, manager of the Continental and Knutsford hotels; Mr. T. A. Davis, F. Auerbach, John Sheriff & Co. I have had experience in the way of examining of accounts in order to ascertain results as an expert.

In all books of account in ascertaining results we simply take the books of entry and bring them up as they should be, and render our statements from what the original statements show.

I have examined the books which have been shown and identified here relating to the business of C. L. Hanneman & Co. We took the original cash book and journal and checked them up as they were posted in the ledger, proved up the entries, and from our proofs we took off our balance-sheets and got the results as are shown in the statements I gave you, which you have in your hand
86 there. When I say we I mean myself and Mr. Henry Wallace, who is head book-keeper at F. Auerbach's. We did this work together. This statement which you show me marked general statement of business of C. L. Hanneman & Company from February 1st, 1886, to January 5th, 1890, contains the gains and losses of the business for each year, and a statement of the resources and liabilities, or what is called a general sheet for each year, and a recapitulation for the entire time.

In the first place we took the cash book, the journal, which is shown here, and checked those entries up, proved them to the ledger; we then took the results of each account at the end of each year commencing with December 31st, 1886; we took the total amount of the purchases, sales, inventories, expenses, and everything comprising the business and made out a list of gain account for each one separately; we took each account, took the totals for the year and brought them over in the profit and loss account, and after taking the profits and taking the losses from the profits, if the profits were larger, which they were most years, we find the net earnings for each year. These we credited there after adjusting them to the partner's account. We credited the gross profits or the gross losses up to the time so far as the books run, which is January 31st, 1890, and in the summary, by adjusting the profits any losses to Mr. Karrick's and Mr. Hanneman's account. We see what each partner is entitled to at the close of business in 1890.

It appears by this statement, in the first place, there was a bonus, the fixtures of $2,000, which was a gain to the business; it was simply put in the business as a bonus. We found after taking an inventory of the stock, or merchandise, in the business as stated, February 1st, 1886, and adding the purchase taken from the
87 inventory of stock of 1887, the petty-ledger accounts or both the petty-ledger accounts and the laundry, and the business the laundry and dye-works expenses, interest, discount, freights, express, and advertising; the results the net earnings of 1886 exclusive of fixtures were $5,848.21, fixtures added $2,000, made the net earnings for that year $7,848.26. As I remember, when we came to the end of the year 1886 we found that the profits were adjusted—that is, half of the profits were adjusted to L. C. Karrick,

the other half to the profits. He was credited with his half of the profits. Mr. Hanneman was credited with no profits; that is, no entry had been made. No credit made of all the profits and afterwards an entry made charging up gain. No account was made of Mr. Hanneman's share of the profits for that year, it merged in the general business.

I did not find anywhere in the business where Hanneman had been credited with his share of the profits for 1886. Karrick had been credited with his share for that year. The year 1887 was gone through with in the same way as 1886. We took the inventory of the merchandise, laundry, dye works, and added the purchases, took the sales. We adjusted the loss and gain into profit and loss account, took the expense, interest, discounts, freight, advertisement, according to the interest in the book. The book showed a loss for 1887 of $3,413.35. This loss was not adjusted between the partners in 1887. The loss was never adjusted to Mr. Karrick's account at all, but on December 31st, 1888, Mr. Hanneman was charged with $1,715.67, which I believe is about one-half the loss for the year 1887. Karrick, according to the books, was not charged with that sum of $1,700 and odd dollars or any portion of it, which I took to be the loss for 1887. The profits for 1886, including the fixtures, were $7,848.26. The loss for 1887 was $3,413.35.

88 For 1888, we found after adjusting the profits and losses for the business, $3,657.13 gain. 1887, the first of January, we took off the books—they were adjusted at the end of the year, and the accounts closed and the profits and losses adjusted; we took the inventory for instance, the merchandise as appears in this case, laundry, dye works, and everything that was used; the stock, we took and added the purchase to it, we took the inventory from it, in fact anything that appeared as merchandise on the accounts in the books, as debits and credits, to the date of the inventory of the first of January, 1888, placed them as a part of the goods on hand. Then of course I adjusted the profit and loss account; that is the way we obtained our results in regard to our profits account, whatever has been paid out and received, and this account and the goods whatever they are taken to be worth at the end of the year. That goes to profit and loss account. The freight, interest, express, advertising, all goes to profit and loss account. The difference shows whether there is a profit or loss in the business. I will state here, in 1888 the store fixtures and laundry were taken that is, I suppose they were taken—out for so much value, which was smaller than the books of the accounts would show they had been paid out for, so there was a loss of $386.64 in the store fixtures, and laundry plant $122.21.

There was also an account of O. J. Barnes, $41.41, which was also charged in the account as a loss. These results taken left our net earnings for the year 1888 $3,657.13. These were not adjusted in our account in the ledger. These books, the firm books for 1888, show losses for that year. According to these books the business of 1888 show a loss of $3,302.79. In our researches we find the item here, December 31st, 1888, on loss and gain of $7,000, which

goes against the earning for that year, for which we find no satisfactory reason. That is page 141 of the journal. The entry
89 of $7,000 appears as follows: In closing the books the bookkeeper closed first entry gross earnings, and further he transferred into the profit and loss account; in this case he just charges gross earnings in order to close out what we call the profit and loss account. He charges gross earnings and credits expense with the total expense of the year; he credits interest and discount, which is correct, the advertising and total expense in addition to that he charges gross earnings and credits loss and gain with $7,000, for which there is no satisfactory reason appearing in the books. There is no reason for this entry in the books. There is no explanation at all for that $7,000 that I can see. The effect of that $7,000 entry is to take $7,000 out of the profits of the business of that year, that makes it as I state here—without it was $3,657.17; it was here a gain, and that shows a loss of $3,302.79.

And then the $7,000. Passing on to 1889; in 1889—addition to adjusting the entries and losses for the year, we found remaining the debit and store fixtures, balance sale of $100; that was after the store fixtures had been closed out, sold them, a little item of ten cents to Fitzgerald on profit and loss account, only Fitzgerald was on the other side, and this ten cents goes to the credit of profit and loss, the results of that year then up to January 31st, 1890, that is crediting the various profit accounts with that, they were sold for the Bast-Terry Company. The net earnings for that year were $1,759.61 up to January 31st, 1890, that is for the year 1889, and the month of January we took the whole thing in clear up to the time the business closed up; this includes the amounts of everything as shown on the books after making all deductions for expenses. My final summary or recapitulation for loss and gain is as follows: For the year 1886, gain $7,848.26; for 1887, loss $3,413.35; for 1888, $3,657.13 gain; for 1889, including the 30th of January, 1890, $17,590.61 gain, making the net gain
90 for the four years to the business $25,682.65, according to the inventories as they show and the books as they show; the supplementary recapitulation embraced in question for the four years, also show loss on fixtures, laundry plant, dye works, John Jacket ledger account with interest; in making up the gain and loss for 1889 we did not embrace the Jacket account or laundry or dye-works plant, that is the amount they were sold for, but their value according to the books. I entered the fixtures at $2,000 originally, and then made a deduction in the way of loss for wear and tear. I took in account the loss amount received for them and both what they cost, the loss would be as I have it here, we embraced that in the supplemental recapitulation; took in account for the four years the $25,682.65, deducting these accounts which were: The Jacket, $287.90; fixtures, $912.64; laundry plant, $540.82; dye plant works, $1,083.03, which leaves us the total profits not adjusted $22,858.18.

Later, in our summary of resourses and liabilities, January 31st, 1890, of Hannaman & Co. and Mr. Karrick, it leaves the following

balances: After deducting the net profits equally between Hannaman & Karrick, it leaves the resources, L. C. Karrick, balance due firm $10,395.94; Geo. B. Cluett, $2.90; Thomas McKelvey, $1,303.47. You see here there may be some of these little balances which are doubtful resources or may have been included to have closed. George O. Chaney, $5.37; cash on hand, $26.47. Petty-ledger balance in the laundry book, $2,608.53; petty-ledger balance in the merchandise book, $4,629.08, making total liabilities $18,971.76; the liabilities are C. L. Hannaman, $16,637.98; McCornick & Company, overdraft, $2,327.78; Troy Laundry Machine Co., a firm in the East, $6, which makes in all, $18,971.76. The above is computed on the basis, the resources and liabilities are computed by the net gain of the four years, after deducting the loss of sale of business to the partner's account. We have the amount of the sales, purchases and all expenses.

91 In adjusting the account between Karrick and Hannaman, we took into consideration the amounts that had been advanced by Karrick to the firm. We took into consideration everything that Mr. Karrick is personally credited or charged with in his ledger account.

Thereupon plaintiff recalled witness HARRY A. BROWNE, who testified as follows: In that adjustment Karrick is credited with the entire amount invested or advanced in the business. And for every advance the account shows he was allowed interest or credited with interest. Hanneman is also credited with everything in this adjustment. He was charged in the business with the overdraft in 1886. As I recollect, Mr. Hannaman was charged interest in several places for his overdraft. In 1887, Mr. Hanneman paid in, including his salary, $1,800 more than he took out. In 1886 his overdraft was $5,000 less, $3,509.69. The books don't show how much more he drew out in 1886 than he paid in. The books show that he had more in the business in 1886, than he drew out, considerable more. In 1886, there is $5,300 charged to Mr. Hanneman and $119.21 credited to him. The books Mr. Hannaman was credited with $3,131.87 as the net profits, and afterwards it was charged back to him against his account, leaving his credit balance $3,509.69. In this credit balance is included the $5,000 original investment. That left him there the difference between $3,500 and $5,000, or $1,500. He was $1,500 short at the end of the year, if he should have had $5,000 at the end of the year, giving him no credit for the profits of 1886. The next year, 1887, he paid in $1,800 more than he drew out, so that at the end of 1887, not taking into consideration the half of the profits of 1886, he repaid his overdraft of the previous year and more. According to the statement the total net profits to the 31st of January, 1890, unadjusted, was $22,858.18. Mr. Hanneman would be entitled to one-half of that and Mr. Karrick one-

92 half, that would be $11,400; that would be in addition to whatever the books showed he had advanced to the firm. That balance on January 31st, 1890, was $5,208, that added to the half of $22,858.18 makes $16,637.08 that the firm owed

Hanneman on that date, and out of the resources the firm also owed McCornick an overdraft for $2,327.78 at that date. The Troy Steam Laundry Machine Company, $6. About $18,000 in liabilities. Karrick, after receiving all he was entitled to, and his profits to that date, owed the firm $10,395.94; Thomas McElvery, $1,303.47; George Chaney, $5.27; cash balance $26.47; all liabilities $18,971.76. That is the result of the accounts at that time, the 30th of January, 1890. We made a statement from the books also, as respects the inventory taken each year, and the gross sales for each year, and the purchases for each year. We made a comparative statement of the percentage of profits and gross sales for the four years, this percentage of profit and loss, we took the inventory of merchandise the first of February, 1886, added the purchase during 1887, subtracted the inventory January 1st, 1887, which left us the net cost of the goods during 1886, and the loss or gain on their sales; the net cost of the goods were, for instance, $16,147.51, and the gross gain so much, and the percentage was 58.27 per cent. The following year we did the same thing. We find the net costs of goods $21,289.12; the gross gain on the same for 1887, was $6,493.88, 29.75 gross percentage; in 1888, the net cost of the goods sold were $28,664.78, the gross gain was $4,940.72, making percentage for that year, 17.24 per cent.; in 1889, up to and including January, 1890, the net cost of goods sold were $32,904.32, the gross gain $15,307.94, percentage, 46.52 per cent., that was on merchandise. The inventory at the end of 1888 was $13,000; in the preceding year it was $20,150.15. In 1886 it was $20,539.72. The purchases for 1887 were $18,559.95; the purchases for 1888 were $19,667.70.

93 The plaintiff here introduced a statement referred to in his testimony, and being admitted, was marked Exhibit "G." (Here insert the same.)

Witness continuing, said: Mr. Karrick continued to credit himself with interest on $15,000, 1887, and until December 31st, 1889, at the rate of 8 per cent. per annum, and also a like rate on the balance over the $15,000. These credits are deducted from the profit.

On his cross-examination the witness said: This testimony which I have given is based on the hypothesis that the books are correct. In 1886, we gave Mr. Karrick credit for one-half of the dividend that the books showed was due him. In 1887 there was a loss. In 1888 there was a profit of $3,000; we credited him with one-half of that. All the way through the account I credited him near the recapitulation here, and each partner with an account of the net gain, and one-half of the net losses. I did not, in making this account, take into consideration that one-half of all the net profits that were gained in the business should first be applied to Karrick, until he was paid $15,000. In arriving at our estimate, we credited both Karrick and Hanneman each with one-half of the profits. We were acting upon the hypothesis that they were equal partners, and each one entitled to one-half of the profits. We examined books on the basis that they were equal partners.

Q. I want to ask you whether upon your examination of the books they did not show on the first of January, 1887, the resources of the concern to be $42,106.18, and at that time, January 1st, 1887, its liabilities were $41,584.46, making a balance of resources over liabilities of $1,575.87?

A. On the first of January, 1887, the resources show $7,848.26 more than the liabilities—the amount of the liabilities after
94 the profit and loss were adjusted. The total resources then were $42,971.37. The merchandise inventory was then $20,537.72. I am sure about that. That corresponds with the books.

The accounts receivable at the store, $28,079.60; accounts receivable at the laundry, $2,388.66; accounts receivable at the dye works, $340.00. O. G. Barnes, January 1st, 1887, $81.95; J. O. Chaney, $41.85; J. E. Woodbridge, $15.00. The store fixtures, $2,204.50, instead of $2,548.28. Laundry plant, $11,154.13. Dye works, $2,247.00. The total of the resources on the first of January was not $42,106.18, as you state it. The total which we have is $42,971.37. On the first of January, 1887, the firm owed Hanneman $3,509.69. At the same time they owed Karrick $24,490.78. There was no overdraft at McCornick's at that time of $6,972.17 nor of any amount. They were not owing Wilson Brothers $2,909.30. The accounts are lumped in this statement. The liabilities of the concern on the first of January, 1887, were not $40,580.40. The liabilities were $35,123.11. It owed Karrick $24,000 and it owed Hanneman $3,500.

On the first day of January, 1887, the resources of Hanneman & Company were not less than $1,600 above its liabilities. Their liabilities were $7,848.26 less than their resources. In this computation I include everything.

The balance due Hanneman on the first of January, 1887, $3,509.69. The balance due Karrick at the same time was $24,490.78. R. R. Street Company, $163.82; Earl, Wilson & Company, $31.50; Wilson Brothers, $1,344.67. Cluett & Co., $5.73. I have not in the ledger an account of $6,972.67 as due McCornick. J. F. Gilman for $140.13 does not appear here; nor A. M. Dolf & Co. for $7.50, nor E. Coon, $13.95; Sprague, Warner & Company, $39.55; Troy Laundry Machine Company, $21.85. The ac-
95 count or demand of C. S. Long, $741.23, don't appear here. Abel Page Fitzgerald is here for $231.05. Diamond Shirt Company, $27.35, does not appear, nor does Studebaker Brothers for $75.

The cash books show a credit of $4,508.68. These items foot up $29,828.64. To this is added $4,568.68, the cash account overdrawn at McCornick's, and the result is $34,397.32; and the difference between the liabilities and the resources is $7,848.26. In February, 1886, Hanneman is credited with sundries amounting to $8,299.10. On March 15th, 1886, he was debited with $3,848.62. There was then due him $4,460.48. In April he was charged with $48.56 and credited with $145.65.

In February, 1886, Hanneman was credited with $8,289.10 for

sundries. In that was included merchandise, $316.05; laundry expense, $153.17; dye works, $90; L. C. Karrick, $16.80; expenses paid by Karrick, $575.

I cannot explain from the entry why, if Karrick paid interest, discount and exchange amounting to $575, Hanneman should be credited with it, or why it should be made a charge against the business, but if Karrick paid $575 for Hanneman, Mr. Hanneman would be entitled to the credit for it. If Karrick paid out money for Hanneman, Karrick would not be entitled to credit for it. If Mr. Karrick paid it out of his personal money the business would be charged with it.

In this case I credited Hanneman for charges paid by Karrick. It appears in the book to be charged, interest and discount and exchange, paid by Karrick. It is impossible for me to explain that, but at the same time there are many entries that seem to be in the original that have no explanation to them at all, therefore it is beyond my province to understand them just as they show.

96 It depends on circumstances whether money that has been actually paid by Karrick should be credited to Hanneman.

On his redirect examination witness said: Interest and discount are always kept under one head. The items of expense and liabilities which were read over to me by Judge Powers I got out of the ledger. The figures I gave are correct copies of those books, and the correct balances on the first of January, 1887, as that ledger shows. All the balance-sheets show the pages as they are on the ledger.

I have not the means of ascertaining how much the liabilities to Mr. McCornick was at the end of 1886. I got from the cash book the balance which showed the cash was overdrawn in 1886 at the end of the year $4,568.68. In 1887 if there were any checks not returned, they would appear in the next year accounts; they would appear in the ledger as liabilities for the succeeding year and so on all the way through. W. R. Pierce appears on the balance-sheet. The ledger does not show the firm owed him anything on the first of January, 1887. The first of January, 1888, W. R. Pierce shows a credit of $15.50.

Thereupon plaintiff was recalled upon his own behalf and testified as follows:

The entry which you show me, interest and discount, February 1st, 1886, paid by Karrick. The word by is an error. That is Mr. Ruff's handwriting, I spoke to him at the time about it. I noticed it. $575, I paid myself, out of my own funds, gave check to Mr. Karrick for $525, amount of discount, he said on the $15,000, for him to pay into the business, he had it discounted; I think the money was in the shape of notes, and he said the discount that he had discounted at the bank was $525, I gave him my check for that amount and the $50, making this $575. The $50 I gave to J. S. Gillispie for services that he rendered in securing the purchase of the

97 Yearian stock. That is the fact in regard to the $575. The $525 was the amount I paid to Karrick on account of Karrick having to discount notes to raise the $15,000 to put in. At the

time I paid it to Karrick I paid him only $525, $50 of the $575 went to Gillispie. That was my private check, I gave it to him on the day he gave me the check for the $1,500 to buy the stock.

Thereupon plaintiff called as a witness on his own behalf H. C. WALLACE, who being sworn testified as follows: I live in Salt Lake City, and am a book-keeper. Have been an accountant about ten years. I am now employed by F. Auerbach Brothers. I have charge of their office as head book-keeper. My experience has been in the one house. In keeping double-entry books, the account being dry goods, boots and shoes, notions and so on. I have in connection with Mr. Brown examined the books relating to the business of Hanneman & Company. I have, somewhere in the neighborhood of three weeks, that is in the evenings. The examination covered the entire period from February, 1886, t[illegible] the business was sold out about the end of January, 1890. We examined the ledger, journal, and cash book, purporting to contain all the transactions relating to that business. We made a summary of the result of that examination. Exhibit "G," is the statement made by Mr. Browne and myself showing the result of that examination of the books of Hanneman & Company. Our first statement showed the losses and gains of 1886. The first item, gain is on fixtures; the business was paid for so much money, and the fixtures belonged to Hanneman & Company at $2,000; they were thrown in, that, of course, was a gain to Hanneman & Co., and the books so show; the merchandise account for each year shows the gain, the gross gain, $9,279.85, the laundry shows a gain of $2,377.18, the dye works show a gain of $1,638. Then the expenses of the business 1886 were $4,242.78, interest and discount,
98 or loss and accounts, $1,913.90; freight and expressage, $696.38; advertising, $281.55. These amounts summarized show a net earning for 1886 of $7,848.26; the business made $5,848.26 and the $2,000 was gained on the fixtures at the time the business was bought. This is the profit and loss, $7,848.26. In going through the books we found it had only been partially credited or adjusted, that is half of it had been credited to Karrick, and the other half left in the profit and loss account. We left the profit and loss account till the end of the closing of the books in January, 1890, before adjusting it. In 1887, the books were closed in a similar manner, showing a net loss of $3,413.35. In 1888 the net earnings were $3,657.13, during these two years the books had been closed by the book-keeper of the firm for the year 1889, they had not been closed, and the entries were continued up to January, 1890, at which time we closed the books, and they showed a gain for the thirteen months of $17,590.61. The gain for 1888 was $3,657.13. The closing entry for December 31st, 1888, is a book in which appears a charge to the gross earnings of the business of $7,000. The expense for that year, interest, discount, advertising, of freight, were all charged into gross earnings which previously had been credited to the gain on merchandise and laundry, and this entry of $700 is something that cannot be explained, there being no fact—no reason

for it—the insertion of $7,000 here in gross earnings, is equivalent in making the business lose $7,000, and the books other than this journal entry show nothing of it at all. It is not an item of expense, or interest, or discount, or freight or advertising. There is no explanation—no account that is closed up by it—and the reason of closing this account into profit and loss is to get any loss or any gain of the business for a certain time. This $7,000 made it appear that $7,000 had been lost in the business, but there is no entry closed by it, and consequently it has no place in it. The footing of that $7,000 in the gross-earnings account, makes the
99 business show a loss of $3,433.35, while as a matter of fact there was a gain of $3,600, odd dollars, in 1888. We have figured up each year on the same basis and the results here stated are taken from the books, and I know them to be correct. At the end of each year we took off a trial balance and the two sides of the book balanced exactly, that is in double entry, if you charge an account with a certain amount you must credit another account with the same amount, or you may charge several accounts, though different amounts make one at the total. The idea being that the several amounts of the credits is equal to the sum of the debits, and our balance-sheets invariably agreed, so that we knew that the books were absolutely correct. Of course we, in going through these books, checked up the entries from the books of original entries, the journal and cash book into the ledger, so we knew that they were all posted correctly, then the ledger accounts were all gone over and computed, so we knew the additions were absolutely correct. After we found out the accounts were correct at the end of the year, we took off the balances of the several accounts, and the total of the debit balance is equal to the total of the credit balance, consequently the books were in balance and correct. The first item in this statement is $2,000, gain in fixtures that was thrown in at the purchase of the goods. In February, 1886, inventory of stock, $17,250; purchase for 1888, $8,619; loss and gain on merchandise, $9,279.85. The next accounts are laundry and dye works, and we kept those accounts separately. The loss and gains were credited through till the final closing of the books. When the business was sold out the statement shows how much was realized from the sale. This statement shows that previous to the adjustment of the profit and loss that the business owed Hanneman $21,821.85.

It shows that when Karrick sold out the business he owed
100 that amount of money, that he had withdrawn his money and that much more. He had withdrawn $21,825.03 and the business owed Hanneman that amount. The total net profits for the entire period is $22,858.18. Half of that is due to Hanneman and half to Karrick. Hanneman's part would be $11,426. The firm owed him before that adjustment $5,000, which makes the total which the firm owes Hanneman of $16,637, and also Karrick was credited with the balance, making his balance $10,000. He owed the firm before the balance $21,825, then that would be diminished by the half of $22,000, and that would leave Karrick owing the firm $10,595.94. The balance is made up of the $16,000; George Cluett

owed the firm $2, George O. Chaney $5, cash balance $26, Thomas McKelvey, $1,300, odd dollars, balance of the petit-ledger account and the amount due different individuals; that was the state of the account on the 30th day of January, 1890. I don't know how much Karrick may have collected since that time. This is a statement of the resources and liabilities. The business had been sold out and Mr. Karrick's account had been charged with the proceeds of the sale. Previous to the sale his account showed a credit. After the sale the ledger showed he owes the firm of Hanneman & Company $21,825.03, that is, he had been charged with enough money to cover his previous credit balance and this $21,825.03, that money was obtained from the sale from the business. When this sale took place, Karrick was charged with a full amount realized from it in the account. The proceeds of the sale were sufficient to cover all his investment and advancement to the firm, and all his credits, and in round numbers $21,000. That $21,000 was due the firm of Hanneman & Company. After the profits were adjusted Karrick would be entitled to $11,000 to be deducted from the $21,000, leaving his indebtedness to the firm $10,000 in round numbers The firm then owed Hanneman $16,000 and odd dollars. What-
101 ever collections were made by Karrick on the petty-ledger accounts would add to his individual liabilities to the firm. If the $7,000 item represented petty-ledger accounts, bad debts that could not be collected, the firm would lose the amounts that could not be collected. Karrick would be charged with half of that loss and Hanneman the other.

If half of such ledger accounts were bad, the half of the 50 per cent., or $1,750, would be added to Karrick's liability to the firm. I understand that the contract, of partnership, provides that of the capital stock Hanneman furnishes $5,000, being an undivided one-half of the laundry property. Karrick furnishes remainder, $20,000, being other half of laundry and of said stock and fixtures. The contract provides for $15,000; Hanneman contributes $5,000 and Karrick $5,000, and Karrick advances to the firm $15,000, on which he is to receive interest at the rate of 8 per cent. per annum. In making this statement of balance between the partners, Mr. Karrick has credit for interest at 8 per cent. per annum on $15,000. He has also received back the $15,000 and the interest on it. He has received back all the money that the books show he has paid into the business. It does not show that Mr. Karrick has been paid back everything and $15,000, outside of the net profits. He has received back in the receipts of the proceeds of the sale and otherwise of this business all he put in and the interest on $15,000. The books as they stand show he owes the business $21,000 odd dollars, the profits were not adjusted, the profits were $22,000 of which he was entitled to $11,000, which would reduce his indebtedness of $21,000 to the firm to $10,000. He has received back all his original investment, including his $15,000 and his interest thereon, in addition to that $11,000 profit. And in addition to that he owes this amount. At the end of 1886 the net profit of the business, including the bonus and fixtures, amounted to over $7,000. Hanneman

was not credited with that. The account shows Karrick
102 drew one-half of the profits, which would reduce his $15,000 to $11,500, in 1886. The comparative statements show that the merchandise on hand at the commencement of the business, February 1st, 1886, was $17,250. During the year till December 31st, 1886, the merchandise purchases were $19,433.23. Making the gross cost of the merchandise for the year $36,683.23. At the close of the business December 31st, 1886, there was merchandise on hand $20,539.72; so that the net cost of the goods sold during the year would be $16,143.51; the merchandise account showed a gross gain during 1886 of $9,279.85, and the percentage of the gross gain to the cost of the goods was 57.48 per cent. in 1887.

In 1887 the petty-ledger accounts were $2,879.60; merchandise, $18,559.95, making a total cost of the merchandise of $49,979.27. Deducting from that the inventory of January 1st, 1888, $21,150.15, shows the net cost of the goods sold during 1887 to be $21,824.12; the gross gain on the sales during 1887, $6,493.88; the percentage on gain to the cost of the goods, 29.75 per cent.

The year 1888 is just the same as 1887, except that the figures of course are different, the cost of the goods being $42,423.46, less inventory January 1st, 1889; $13,575.68 shows the net cost of goods sold; $28,664.78, gross gain of the sales of 1888. The expenses of 1887 were $4,000 more than they were in 1888. I account for $3,000 of that disparity in that the partners were each credited with $1,500 for salary. They were not credited with salary in 1886. At the end of 1887 the merchandise accounts $20,000 of merchandise left on hand, whilst at the end of 1888 there was $13,000 worth left; considering that the sales for the two years were about the same there is no way of accounting for that difference except in the latter year the merchandise was inventoried at a reduced rate. The
sales of merchandise for 1889 were $43,583.18. The mer-
103 chandise left on hand in 1889 sold for $16,040.65. The $29,000 that was received on the sales by Karrick to Bast, Terry & Company was received for the following items: Merchandise, $16,040.65; laundry plant, $12,000; store fixtures, $1,324; laundry stock, $427.20, making a total of $29,729.85.

On his cross-examination witness said: There are, I find, different accounts kept with the store, laundry and dye works. The dye works show a loss in 1887 of $879.36. The laundry in 1887 shows a gain of $2,367.05. A gross gain for the store merchandise of 1887 was $6,491.88. The merchandise and laundry show gain for the year, and there was a loss on the dye works. The several expense accounts were charged up to the entire business. The general expense account was the store account. The laundry made $23,000 in 1887. The losses for that year are attributable to the dye works and store. We have put down the fixtures here as stock in trade for $2,000. We simply credited them up as part of the profits. The book shows the net earnings of this whole business from the time they commenced till the books closed were $22,858.18. The books show he has withdrawn $21,825.03. That amount consists of whatever he withdrew out of the business and the sale of the business.

Before the sale of the business the ledger shows Mr. Karrick to have credit of about $18,000. Commencing with 1886 Mr. Karrick is credited with $17,000 investment money; laundry, $5,000; during 1886 he is credited with money that he paid into the business, $2,410. $160——

By Mr. HALL:

Q. I can't get at your testimony. I desire to know when and what items constitute the $21,000 which you claim Mr. Karrick has received in this business.

104 A. That is what I wanted to show by commencing the end of 1889; up to that time the account shows the amounts that he paid in and that he drew out of the business. His account shows at the end of 1889 a credit of $18,000. Now he sold out in January, 1890, and during January, 1890, he is charged with several small amounts of money, checks that he drew. One of them is $5,100. Now he is charged with also with $14,895.92, the note that he received from the company. Now the other items, money which he withdrew and is charged to his account, which all these items show in the journal, make up this $21,000, that is he drew enough money to cover his credit balance of $18,000, and $21,000 more. The stock in trade at the commencement of the business was $30,988.30. Of that Karrick contributed $22,000. Hanneman would have put in $6,988.08, the $2,000 for fixtures being a bonus which of course has been divided equally between them.

Hereupon counsel for defendant asked the following question:

Q. The proposition that I desire you to figure out for the court is this: Taking the stock in trade as contributed to the business at its valuation, fixing the amount contributed and the amount contributed by Hanneman; then take into consideration the business as transacted by the firm from the start up to the close, as testified by you in this case; devote one-half of the net profits to the repayment of Karrick on his $15,000, so far as it goes, the other net profits went into the business, except that Hanneman and Karrick each after January 1st, 1887, could draw $125 per month; take into your calculation the amount of net profits which they drew, $1,500 apiece, and after you have made the summary charging Karrick with the management and control of the whole thing, give the firm credit for what he has taken out, also for what Hanneman

105 has taken out, then divide the firm profits, giving four-fifths to Karrick and one-fifth to Hanneman, and give us the result please, as stated in this contract and explained by me.

To the said question counsel for plaintiff objected, and thereupon the said referee sustained said objection, and to said ruling of the referee defendants, by their counsel, then and there duly excepted.

Continuing his testimony the witness said: The petty ledger contains the accounts owing the firm for merchandise sold to parties, or laundry work done for them. The value of these accounts de-

pends upon whether they are collectible. The store petty-ledger accounts on the first day of January, 1887, were $2,879.60. The laundry accounts were $2,388.66, and the dye works $416.10. On the first of January, 1888, the store accounts were $2,605.60; laundry accounts were $2,331.83; dye works, $340.90. On the same date in 1889 store accounts were $2,471.05; laundry accounts were $2,236.62; there were none for the dye works.

At the end of the business the store accounts were $4,629.08; laundry accounts, $2,608.53. In the dye works there were none, except there was a balance due the firm from Thomas McKelvey, who had bought the works. I take the latter item into consideration in making my statement. It is $1,303.47. The value of these items would depend on their being collectible. In making my estimate I have charged Mr. Karrick with the full amount of those items. I don't know what proportion of them has been collected.

By Mr. POWERS:

Q. I would like to put a question, with consent of counsel and your honor: I would like you, Mr. Wallace, to give us a statement of the accounts between these partners figured upon this
106 basis: At the end of each year devote one-half of the profits of the business towards the repayment of $15,000, the capital stock furnished by Mr. Karrick, deducting that at the end of each year—that is, deducting one-half of the profits, if there are any, and credited the business with the other half of the profits, charging each partner with the amount that he has drawn out during the year commencing with the first of January, 1887, at the rate of $1,500 a year. Allow him to draw out $125 per month, and then tell us how on that basis the business would stand at the close of the business so called. I mean to figure up the relations between the parties in accordance with those two clauses in the contract, and give us an understanding about how they were standing at the close of business under the provisions of this contract.

A. In answer to the foregoing question I read the following statement: It was understood that during 1886 there was to be no division of profits. January 1st, 1887, L. C. Karrick's account shows a credit of $24,490.78, including the $15,000. Now then, the profits for 1886 were $3,924.13. Now half this amount was withdrawn by Mr. Karrick, as against the $15,000 loan, leaving a balance on that loan of $11,075.87. The balance of his credit at that time, $9,490.78, stands to his personal credit. Now, then, during 1887 he put money into the firm, including interest that had been credited to him on this investment, amounting to $17,403.71, making a total credit of $26,894.49. He withdrew, during 1887, $20,736.11, which would leave to his credit, outside the loan, $6,160.38. Now the business of 1887 shows a loss. I have credited that loss after deducting it from the credit of 1888, and that is the gain of 1888. Mr. Karrick's account then shows a credit on the first day of January, 1888, of $6,160.38. He put into the firm during 1888 $14,466.45, making a total of $20,626.83. He withdrew in 1888 $12,870.36, leaving a balance to his credit, on the first of January, 1889, of $7,757.49.

107 Now the gain, or half gain for 1888, was $1,828.57. Deducting from that half the loss for the year previous, 1887, $1,706.67, leaves half the net gain for the two years, $121.90. That deducted from the $11,075.87, leaves still due Mr. Karrick on that $15,000, $10,953.97. The credits to Mr. Karrick's accounts during 1889 were $46,066.37, making a total credit of $57,822.84. He withdrew up to December 31st, 1889, the time the business was sold, $53,536.98, leaving a credit to his personal account of $285.86. Now half the gain for 1889 was $8,795.31. Deducting from that half the loss made on the laundry plant and at the time of the sale amounting to $1,412.24, leaves half the net gain for 1889, $7,383.07. That deducted from $10,953.00 leaves $3,570.90 due Mr. Karrick on the $15,000. Those amounts together make $3,856.76. Now, during 1887 both parties were credited with $125 per month. Now, crediting each of them for 1888 and 1889 for the same amount per month, and deducting that from the other half of the profits would be to give Mr. Karrick half, $3,000. That would make his total credit $6,856.76, and leave the balance of the profits, $2,714.54. That would make Mr. Karrick's total credit $9,571.30. Now Mr. Hanneman's account shows a balance on January 1st, 1887, of credit balance, $3,509.69, and is debited $12,334.13, leaving a balance to his credit on the last day of January, 1888, of $5,326.34. He withdrew, in January, 1888, $117.45, leaving net credit of $5,208.89. Crediting with salary from January 1st, 1888, to December 31st, 1889, at $125 per month, $3,000, makes the total credit to Mr. Hanneman's account of $8,208.89. But I must be understood that this estimate is on the understanding that this amount paid Mr. Karrick was withdrawn from the business. As a matter of fact the profits were not withdrawn from the business, and he would be entitled to a credit for the amount of profits that had been deducted from
108 the $15,000 on his personal account, which would make his personal account show a credit of $21,000.40, and the firm of Hanneman & Co. owed Mr. Karrick of that $15,000, $3,570.90. That is, Mr. Karrick's credit would be $21,000.40 and give Mr. Hanneman credit for half the gain—that is, after deducting the salary of $2,314.54 would show Mr. Hanneman's credit to be $10,923.43. That is the way the accounts of the partners would stand at the time the business was sold out. Mr. Karrick's credit would be $21,000.40. Mr. Hanneman's $10,923.43. In making this statement, however, Mr. Karrick has been credited with interest on $15,000 through the entire term.

Q. Will you kindly state to the court upon the hypothesis that the partnership continued until Karrick sold out the business to the Bast-Terry Mercantile Company, the result being just as you have stated it, how much Karrick would be owing Hanneman upon an accounting?

Mr. RAWLINS: That is to include the petty-ledger accounts.

Mr. POWERS: That is to include everything.

The WITNESS: I have got the result, but so far as being absolutely correct or not, I want to examine the books to some extent.

Hereupon on motion of counsel for plaintiff this action as against Bast-Terry Mercantile Company was dismissed.

The witness Wallace, at a later date continuing his testimony, said: I am well able to answer the question last put to me. There would be due Mr. Hanneman from L. C. Karrick $16,637.98. I have the figures here on which I arrive at this result, but they are not the same as those I gave you in answer to a previous question.

The figures from which I get this result is as follows: The
109 partnership firm is $25,000, of which the machines, machinery, fixtures and stock in and pertaining to the said laundry business, constitutes $10,000, and the stock in trade and fixtures in the mercantile business bought of W. H. Yearian, constitutes $15,000. Of said capital stock Hanneman furnishes $5,000, being one-half undivided of the laundry property, and Karrick furnishes the remainder $20,000, being the other half undivided of said laundry property, and said stock in trade, fixtures bought of said Yearian. The $15,000 capital stock furnished by Karrick, interest shall be paid to him by the firm monthly, at the rate of 8 per cent. per annum, until the principal is paid as below agreed. Now then from the partnership agreement it seems that Hanneman furnished $5,000. Karrick furnished $20,000, of which $15,000 was invested in the business, $15,000 loaned to the firm of Hanneman & Company. The books should show Karrick's stock account $5,000, and Hanneman's stock account $5,000. Karrick loaned to the business a credit of $15,000. On this $15,000 Mr. Karrick was credited with an accepted interest up to the time he sold out. Now at the close of the business, January 31st, 1890, after the sale of the business, L. C. Karrick, stock account, $5,000; C. L. Hanneman, stock account, $5,000; C. L. Hanneman, personal account, $208.89. L. C. Karrick loaned to the business $15,000; W. C. McCornick & Company, overdraft, $2,327.78; Troy Laundry account, $6. These are all credits. Now the credits are: C. L. Hanneman, personal account, $4,714.14; L. C. Karrick, sale of business and withdrawn from business January, 1890, $37,110.98; cash on hand, $26.47; store ledger account, $1,629.08; laundry ledger account, $2,608.53; George B. Cluett Brothers, $2.90; Thomas McKelvey, $1,703.47; George O. Chaney, $33; undivided profits, $22,858.18. Now from these figures the present showing of the business is: Resources, L. C. Karrick, personal account, $4,714.14; sale of
business withdrawn, $37,110.89, making a total of $41,825.03,
110 less loan to Hanneman & Company, $15,000; balance due Hanneman from L. C. Karrick, $26,825.03; cash, $26.47; George B. Cluett & Brothers, $11.90; Thomas McKelvey, $1,303.47; George O. Chaney, $5.37; laundry ledger account, $1,629.08. Those are the resources of the business. The partnership agreement says: "The title and interest of the respective parties in the firm property is to be proportioned to their respective interests thereof, as hereinbefore made, being taken as a basis and altered as payments from time to time are made by or to either parties." It also says: "That of the net profits of the business one-

half shall go to Karrick to apply in repayment of the $15,000 of the capital stock furnished by him until all thereof is repaid, said net profits to be computed and so paid on the first day of January of each year; the other half of the profits shall be left in the business, except that after January 1st, 1887, each of said partners may draw thereof not to exceed $125 per month for personal expenses; profit and loss shall be shared equally and alike, and neither partner shall have any salary compensation for services rendered to the firm, other than profits." Now with reference to this loan of $15,000, the amount due Karrick after the repayment as provided in the partnership agreement, would be as I have stated before, and Mr. Karrick's personal account would be credited with that amount, making his personal account so much more and his loan account to the business so much less. But as a matter of fact, it makes no difference, except that there are two accounts instead of one, in which way he is credited. The business still owes him $15,000 up to the time it was sold out, and Mr. Karrick was credited with his interest up to the time, so that I have shown the repayment to Mr. Karrick as I have stated in the resources, showing him owing the business so much, deducting the $15,000, that being paid, shows him owing the business so much money. Now then, the stock account of which each partner shows that each is credited with $5,000
111 investment, there is no entry to show in the books anywhere that either partner made a payment to the other or charged their respective standing, consequently the stock accounts, or the investment accounts of the partners having not charged the business, the books rather show that no payments were made, except in one instance to Mr. Karrick on account of his loan to the business, and Mr. Karrick's loan was not repaid because he accepted interest up to the time the business was sold out. Now the profits had to be divided equally and alike. The profits of the business were $22,858.18, half of which went to each partner, making at the time the business was sold out, L. C. Karrick's stock account. These are the liabilities of the business: $16,429.09, Hannaman's stock account, $16,429.09; McCornick & Co. overdraft, $2,327.78; C. L. Hannaman personal account, $208.89; Troy laundry, $6.00, total of resources and liabilities being $35,400.85. Now, then, after the division of the firm property, L. C. Karrick then sold out. The firm business is charged with $26,825.03, cash account as above, $8,575.82, making a total of $35,400.85, less the McCornick & Co. overdraft and the Troy Laundry account paid by L. C. Karrick, $2,327.78, leaving property of Hannaman in possession of L. C. Karrick, from which deduct L. C. Karrick's interest therein, as charged by his stock account, $16,429.09, leaves C. L. Hannaman $16,637.98. My computation is simply what the books show. If that were taken into account it would reduce the liabilities $5,000. In making the final division, I divided the profits equally between the partners.

Q. It seems to me you had lost sight of the question that was originally put to you. The question as put to you was this: I would like you, Mr. Wallace, to give us a statement of the accounts

between these partners figured upon this basis: At the end of each year divide one-half of the profits of the business towards the repayment of the $15,000 of the capital stock furnished by Karrick. Deduct that at the end of each year, then deduct one-half of the profits, if there be any, and credit the business with the other half of the profits, charging each partner with the amount he has drawn out during the year, commencing with the first day of January, 1887, at the rate of $1,500 per annum. Then tell us upon that basis how the business would stand at the close of the business so called. As you will see there was no money to be drawn out by the firm or either party, commencing January, 1887, except as provided. Figure up the relations between the parties in accordance with these two clauses of the contract. That is, "of
112 the profits of the business one-half shall go to Karrick to apply in repayment of the $15,000 of the capital stock furnished by him until all thereof is paid, said net profits to be computed and so paid on the first day of January of each year. The other half of the net profits of the business shall be left in the business, except that after January 1st, 1887, each of said partners may draw thereof not to exceed $125 per month for personal expenses." Here, you give me a set of figures, and upon those figures I put this question: "Will you kindly state to the court upon the hypothesis that the partnership continued until Karrick sold out the business to the Bast-Terry Mercantile Company, the result being as you have just stated it, how much would Karrick be owing Hanneman, if anything, upon an accounting, taking into consideration the proceeds of the sale and everything connected with the business?

A. The figures I gave you just before the last were not correct. As I told you I have never seen or read the partnership agreement, and those figures were given upon the hypothesis of Kerrick getting three-quarters and Hanneman one-quarter of the profits of the business. I have not taken it upon myself to construe the partnership agreement, nor have I furnished figures based upon my construction of that contract, but I understood at the last sitting of this court that the court construed that the profits were to be divided equally and alike.

Counsel for plaintiff here objected to the last question propounded to the witness on the ground that the same was not based on a correct hypothesis.

Thereupon the referee ruled that in effect that the contract of partnership provided for a division of the profits and loss equally between the said partners.

To which ruling defendant duly excepted.

The witness continuing his testimony in respect of the last
113 question said: I misunderstood the question; it did not occur to me to state that I misunderstood the question, and had figured it out on another basis before I made the answer to it which I have made. I have not had any counsel or consultation with the other side about it. I simply told Hanneman what the result was. I have not seen counsel. I was aware that that was not

the question you put to me, and before I answered in court I told Mr. Hanneman that the result was not changed, that it was the same. I mean by that the result obtained by Brown and myself was not changed. If I had figured it in accordance with the question you put, the result would have been the same as the answer I made in court before. If I remember right I gave an amount in answer to your question as being the amount, but said that I would prefer to have time to look the matter up, but I did not want to be understood as having been correct in the answer. It is not a fact that I did not desire to figure on any basis or in any way so as to arrive at a different result than Brown and I arrived at. I have no objection to answering it, but, as I say, I misread the contract.

Q. Then Mr. Karrick's credit being $21,000.40 and Mr. Hanneman's $10,923.43, will you be kind enough to state to the court how much Karrick would be owing Hanneman upon an accounting?

To this question plaintiff, by his counsel, objected, and thereupon the referee sustained the objection. The defendant, Karrick, by his counsel, then and there duly excepted.

And thereupon said defendant Karrick, by his counsel, moved the referee to strike out the answer made by the witness to the question as put to him and as hereinbefore set out, which motion was denied by the said referee, to which said last ruling of the referee, defendant Karrick then and there duly excepted.

114 Thereupon the paper marked Exhibit "A 1" was admitted in evidence.

On his redirect examination witness said: There were some salaries charged to the dye works, but I cannot say what they were without the books. Mr. Karrick is credited with $2,000 as a credit against the firm. The following items on page 1 of the journal were taken into consideration by me. First merchandise debtor, $17,250, store fixtures, $2,000, to L. C. Karrick; merchandise debtor, $17,000; C. S. Hanneman, 250; profit and loss account, L. C. Karrick, $2,000. On L. C. Karrick's personal account he received credit for $2,000 about the first of February, at the beginning of the business, in 1886. I don't know that that $2,000 refers to the amount contained in those notes. I simply took the figures as shown in the journal. If that $2,000 represents the two notes of $1,000 each, then I did take those notes into consideration.

On his recross-examination witness said: I did not take into account the $5,000 note. I did not because I was not afraid it would reduce the amount owing from Kerrick to Hanneman. I was figuring in accordance with the contract. I saw that clause in the contract which provides that "Aside from and independent of the firm business, except as interest thereon compensation for services, Karrick loans Hanneman this day for a term of five years, $5,000, secured by mortgage on Hanneman's interest in the firm property." The basis of my figuring is the entries in these books of account. That $5,000 is not contained in this account. In giving my answer upon my figuring, I referred to the contract because I could not tell from the books how the profits were to be divided. I

looked at so much of the contract only as showed how the profits were to be divided.

115 Thereupon plaintiff called as a witness in his behalf, J. A. HURD, who being sworn testified as follows: I remember of delivering a copy of the letter which you show me, to Mr. Karrick. It is dated February 15th, 1888, (said letter is marked Exhibit "A"). About this date, February 15th, 1888, Mr. Hanneman came into the office, then at 142 Main street, and Mr. Sheeks wrote out this letter of which this is a copy. He handed it to me with the request that I hand it to Mr. Karrick, which I did, and at the same time asked him if there was any answer, and he said: "No, there is no answer."

Thereupon plaintiff called as a witness LE ROY DECKER, who being sworn, testified as follows: I worked for Hanneman & Company two or three years ago for about two weeks. I know both Karrick and Hanneman. I remember when there was some trouble between them. All I remember was I came down street there one morning, and I seen both in the door speaking, and I was standing by. I don't know what they were talking about. I don't remember anything they said. The next think I saw Mr. Karrick shove Mr. Hanneman out onto the sidewalk. It was done in an angry way. I don't remember that I heard Mr. Karrick say anything. I don't remember that he swore at all.

Thereupon the plaintiff, C. L. HANNEMAN, was recalled and testified as follows: Mr. Karrick never pushed me out on the sidewalk but once, and that was the fore part of February, 1888. That is the same occurrence to which I have before testified.

It is agreed between counsel for plaintiff & defendant that $379.50 of Karrick's disbursements shall be disallowed if plaintiff is entitled to recover.

It is admitted by the parties to this action that on the 16th day of May, 1888, the following notice was published by defendant Karrick in the Salt Lake Daily Tribune, a newspaper published in said Salt Lake City:

Notice.

116 "All accounts due the late firm of Hanneman & Co. in the store, No. 142 Main street, the Troy steam laundry and the dye works, must be paid to the undersigned.

(Signed) L. C. KARRICK."

The plaintiff, C. L. HANNEMAN, continuing his testimony, said: The $17,000 mentioned on page 1 of the journal, is for $15,000 that Mr. Karrick gave me and is the extra $2,000 he paid to take up those notes—the two $1,000 notes each which I gave to Yearian for the balance of the purchase price of the business. These which you show me are the notes.

On his cross-examination he said: I find this $17,000 on the first

day of February, 1886. These notes are dated February 3rd, 1886. One runs for thirty days and one for sixty days. One of them was paid whilst I was East, the other was not. The transaction was not entered in that book until about 1 or 1½ years after.

Thereupon the witness WALLACE was recalled by defendant for further cross-examination, and thereupon said witness WALLACE testified as follows:

In making my final computation giving the result as to what Kerrick would be owing Hanneman, I took into consideration the amount he received on the sale of this property to the Bast-Terry Mercantile Company. Deducting the amount of that sale, $29,000, from the firm assets, would leave the firm assets a little over $3,000, one-half of which would belong to each partner. Deduct-
117 ing the sale of the goods, one-half due each partner would be $1,500 instead of $16,000. In arriving at the conclusion I consider the petty-ledger accounts as solvent assets.

Hereupon a paper marked Exhibit "A 2" was introduced in evidence. (Here insert the same.)

And thereupon plaintiff rested his case.

And thereupon the defendant, L. C. KARRICK, was called and sworn as a witness in his own behalf, and testified as follows: The note which you show me is marked Exhibit "A 2" in this cause, is a note for $5,000; it has not been paid, nor has any part of it. I am the defendant in this case and live in Salt Lake City. Have lived here a little over ten years Am forty-three years old. I am engaged in banking some, a little in mining and other business. Prior to the first of February, 1886, I was engaged altogether in mining in the Calumet Mining Company. I was superintendent of that company and I sold out my property to the company. I have known Mr Hanneman since 1885. Prior to entering into these articles of copartnership we had some negotiations. We were over at the Alta Club, I think, sitting at the same table, and I became acquainted with Mr. Hanneman. I had these mining sales, and I suppose it was published in the papers. At any rate he knew of my mining sale, and in conversation I made the remark that I wanted to get into something legitimate; that I had made several stakes and I wanted to save this one, and he called my attention to the laundry. After several conversations he said that the laundry was paying about twenty-five per cent. I thought it over, and I investigated something with regard to the finances of the laundry and I found that it was somewhat embarrassed. I found that there was an overdraft and interest on a mortgage for $3,000, and I finally paid him. I took his representation in regard to the value of the laundry. I did not know much about it. He was recommended to me by different parties. He
118 represented that the laundry had cost upwards of $10,000, so I paid for the laundry. I paid in cash $5,000 for half of the laundry. After I had bought the laundry I then owned one-half

of it something like a year and a half before anything was done with regard to the furnishing goods business; but the books will show; and he called my attention to Yearian being in bad order. He wanted me to sell out, and stated that he had experience in the business, that it also would pay twenty-five per cent.; probably that amount. I told him to go and see what he could buy it for. He told me that he could buy this business for $15,000; that he thought so. He came back and said it was satisfactory; that he could buy it for $15,000. He thought it invoiced considerably more than that, and that Yearian was anxious to go away and wanted to sell out and would let him have it for $15,000. I let him have the money. I gave him my check on McCornick's. Up to that time I put in $20,000 into this business; that is I gave my check for $15,000, and $5,000 for half the laundry. I forget just the circumstances, but anyhow the report came back that the business could be had for $17,250 and that he had arranged to give his note for the balance. He had paid $250 cash to close it out. He gave his notes, two notes of a $1,000 each for thirty and sixty days, and paid the other $15,000 in cash, making $17,250. He said he would take care of those notes out of the $5,000 I was to loan him without interest for five years. I loaned him $5,000 in addition to this sum which I have mentioned, without interest for five years. The amount is evidenced by this note, Exhibit "A 2." That is the note. So that up to that point the amount I had loaned him and that paid for the laundry and the purchase of the store made $25,000 that I had paid over. The contract of partnership was made on the 3rd of February, 1886, executed at that time I suppose. I suppose then we would have about
$25,000 in the business. We had an understanding as to
119 what that $5,000 I loaned him was to be used for. He talked
of enlarging the business. He insisted he could pay these notes and take care of his proportion towards putting in a dye works. Something was said about paying his obligations out of that too. I asked him how he stood; how much he owed. That was one of my first questions. He told me he owed such and such indebtedness. Not very much. I know Wilson Brothers, or some one connected with Wilson Brothers of Chicago. They had a note for collection of $2,000, and he agreed at the sale, the first half of the money I loaned him, that out of the money I loaned, he would check up all his personal indebtedness and put the money into the dye works with the $10,000. A very few days after the contract was signed he went East. He said he would be gone two weeks. He was in fact gone six weeks.

When he went away he left the business in charge of a young man whose name I cannot now think of. He was the head clerk, and the laundry was left in charge of Daniel McHenry. The store and laundry accounts were kept separate. When he went East I went to St. Louis and we traveled together as far as Cheyenne or Omaha. I was absent ten days. When I returned to Salt Lake City I did not go immediately to the store, not till one of my employees sent for me. I had been gone from the store two or three

weeks. When I got there I found the laundry in considerable confusion. The foreman was drunk and the people were threatening to quit, and there was delay in getting out the work, and the horses were driven to death. I had immediately to get a new team; in fact, everything was in confusion about the store and laundry. It was not necessary for Hanneman to have been absent for more than two weeks. He had told me that a communication in care of Wilson Brothers, Chicago, would find him any time whilst he was away.

I did not receive any word from him whilst he was away.
120 No one at the store received any word from him. I got no word from him. I telegraphed him in care of Wilson Brothers, Chicago, and received no reply. That was the address he gave me. I telegraphed to Wilson Brothers two or three times and got reply that he was out of town and did not know where to reach him. Just before he started home I heard from Wilson Brothers that he was in Chicago. Whilst he was gone I put new men in the places. I gave my time to the business. Whilst he was absent there was a draft on Hanneman & Company. There was no money on hand to meet it, and I guaranteed its payment.

Counsel for plaintiff here moved to strike out the last answer of witness, and thereupon the referee ordered the same stricken out, and thereupon counsel for defendant then and there duly excepted.

I afterwards learned that the draft was for merchandise. I don't remember how long it was after his return from the East he continued to manage the business exclusively. Since the noon recess I have made search for the statement of the business which Hanneman made me on the first of January, 1887, and I have been unable to find it. The last time I saw it it was folded and in the books, the last time I saw it. I do not know where it now is. That statement, or the substance of it, is in the books themselves. After receiving that statement from Hanneman I made an investigation of the books. I had a talk with him then on the subject of his expenses at Chicago. I asked him for a statement of his expenses whilst he was East, and he explained that it was thirty hundred and odd dollars. He would never explain to me concerning eight hundred dollars of the thirty-eight hundred dollars that he spent on that trip. He said that he had used company money, but he could not explain how he had used it. He said he had not informed me of it before because he thought I had implicit confidence in him, and he could
121 straighten it up without my knowing anything about it. I asked him how he had used it. I asked him if he were a defaulter. He said he was not, but he had used the company's funds for private purposes. At that conversation I called his attention to his having drawn money from the firm contrary to our agreement. He claimed however, that what he had deposited would offset what he had drawn out, until I showed him that there was a difference of some thirteen or fourteen hundred dollars against him. I talked to him about the business running at a loss. I called his attention to the fact that we started out without any in-

debtedness, and that the business had been losing money; and his statement showed that there was a possible profit, but the inventory of the goods had been taken at full cost, and that the petty-ledger accounts had been taken at their full cost. Up to the first of January, 1887, the books were kept under Mr. Hanneman's direction entirely. The books were opened in the latter part of 1886. Prior to the time they opened these books the cash account was kept a great deal on slips of paper. Part of the laundry cash and dye works was kept on little slips of paper filed away in a desk in the southwest corner of the store. The store cash was kept in lead pencil. The dye-works plant was added in 1886; I think about May, 1886. The bank account of Hanneman & Co., with McCornick's bank, was opened in February, 1886. I don't know where the cash of the concern was kept up to the time the account was opened with McCornick. I asked Mr. Hanneman about it once, but he could not explain it. The store was open and doing business during that time. Coming down to the first of January, 1888, I had a conversation with him about the business, and about that time I examined the stock of goods in the store and found it in very bad condition. We had, as near as I can estimate $7,000 worth of underwear, all of broken sizes.

122 It would have been impossible to get two suits alike; of one number of jersey jackets we had stock enough to last for years. There was a good many more times than the trade demanded, and I had to sacrifice it at a discount. Lots of these goods were sold fifty cents on the dollar. There were fifty or one hundred dozen shirts in the cellar that were out of sale, being left there to turn yellow. By relaundrying some of them we realized fifty cents on the dollar on them. There were a good many undershirts that lay under the counter which had been left over from the Yearian stock and allowed to get mouldy. There were also probably twenty dozens of white shirts which we call "personal orders"—that is, persons who have left their measures, and which had been sent East for, and were unsaleable because they had the persons' initials on them. They were what we called misfits. They were left under the counter without any particular care. There were also two or three hundred dozen collars, supposed to sell for twenty cents apiece, which we sold for fifty cents a box of ten each box. We had to sell them so because they were unsaleable goods. The balance of the stock was in just about the same proportion. The laundry was in a very bad condition. The cesspools were filled to overflowing. The machinery washers were pretty well worn out, some of them in fact entirely worn out; that there was one or two machines in there in good condition—the reciprocator and collar and cuff machines. The cesspools were inadequate; they were too small for the amount of water that went through the laundry; it ran out into the alley back of Auerbach's, filled up the flow of the laundry, and at times ran farther down through Auerbach's yard, and at one time into a building run by Barr & Company, and I believe damaged cigars or things of that kind. I examined the stock and had this last talk with him in the fall of 1887. After

I had examined it and had a talk with Mr. Hanneman, I told him this management was bad, that we were losing
123 & 124 money. He disputed it. We had several conversations in the store. One of them was near the store. In that conversation we had quite a quarrel, and, finally, we adjourned into the office because we were disturbed by the people coming in to get packages and goods. I then told Mr. Hanneman I considered we were losing money; that if we were compelled to settle up our indebtedness that we were bankrupt, and he considered we were not. He said that if I would give him an option of sixty days on the business for the amount that I had put in, waiving any profits that might be made, and waiving the payment of that note for five years that I might take his interest in the firm; and he said that he would step out of the firm and give me possession in sixty days, if he did not pay me that money. If he stepped out of the firm I was to pay all the indebtedness of the firm. If he stepped out I was to cancel the note of $5,000. That conversation took place in the office. The conversation started out by the store. The next day after that conversation he went out of the store, and was out for several days; and during the next two months he did not take the same interest in the business; he was out of the store a great deal of the time.

I am not positive whether at this time I had a mortgage on the laundry; I had had one to secure $5,000. The laundry at that time was worth $5,000; it could be duplicated for that. The boiler was out of repair, and a great portion of it had to be rebuilt. This conversation which I had with him occurred about the first of December, 1887, and the sixty days expired somewhere about February 1, 1888. At the end of that time I had another conversation with him. He then said he could not raise the money. We then talked for some time about the condition of the business and about his not being able to raise the money, and I insisted on taking possession under our agreement. I do not remember all that was said,
but I took him by the shoulder and told him I wanted pos-
125 session of the store. The physical force I used was to put my hands on his shoulder; that was all. He never came back into the store afterwards.

I don't remember just how much he was to pay for the business if he took it on the sixty days' option; the books will show; I think it was some $15,000 or $16,000. He was to pay what I had invested and loaned to the concern for $15,000, the $2,000 and $5,000 paid on the laundry, but I was to waive the $5,000 I had loaned him on his note; he was not to pay that. The agreement that if he did not pay me what was due me I was to take the concern and pay all the firm indebtedness, and I was to forgive him this $5,000 note which he owed me.

After he went out of there I improved the laundry plant by putting in all the latest laundry machinery. I improved the cesspools by building a double settler, and then dug a large cesspool which ran up side of the laundry. The cesspool cost between $700 and $900. I put them in first-class condition. The machinery I put in

was of the latest improved. The machinery cost, when placed in position, between $4,000 and $5,000. I improved the stock in the store. I jobbed off all the worthless stuff; in some instances sold for twenty-five cents on the dollar. Hats that cost $36 a dozen sold for a dollar apiece where they were off sizes and those shirts, that were in the cellar I remodeled them, these personal-order shirts, tabs cut off and worked over. I went through the stock generally and sold what was worthless, what I could that was unsaleable to the first-class trade, and aimed to stock in first-class goods. I put Mr. Pierce in charge of the store in 1888. At the time Hanneman went out there was an overdraft against the concern which I paid. I paid also all the outstanding debts. The overdraft and outstanding debts aggregated between $10,000 and $11,000.

I hanged the sign over the door for a sign, "L. C. Kar-
125½ rick, successor to Hanneman & Company." On the letter and bill heads I had a rubber stamp marked, "L. C. Karrick, successor to Hanneman & Company." There were two persons present in the store when Mr. Hanneman and I had the conversation about the first of December, 1887. They were Miss Belle Green and Mr. Chaney. They were both employed in the store. They could hear us talking without doubt. We were talking pretty loud. In that conversation it was stated that if he did not get the money during those sixty day- he was to step out and I was to pay the indebtedness. The firm was to be closed up in that way. I was to collect the outstanding bills. After I had been in the store I put the notice in the paper which has been put in evidence here. It was about the 16th day of May, 1888, that I put that notice in the Tribune. Mr. Hanneman has never said anything to me pertaining to the firm business since he went out of the store. He never came in the store nor asserted any rights there. I ran that business in my individual name a year and ten months. I then sold it out to Bast, Terry & Mercantile Company.

I received for the business $29,000, one-half in a note and one-half in cash. In the meantime I had built up the business very much by putting competent buyers and increasing the laundry plant, and in doing this I had to use my individual money. Five or six thousand dollars of my individual funds was thus used in putting in additions to the laundry plant, and five or six thousand dollars more in paying off the indebtedness of the firm. I gave my personal check for all the indebtedness. All of the debts due the firm were not collectible. I put Mr. Chaney at work trying to collect them, and Mr. Gus. Woods. I made effort to collect the amount which stands on the books uncollected by putting some in the hands of attorneys and trying to collect all myself. I
126 have been pressing the matter of making collections of those outstanding accounts ever since I sold out. I kept Mr. Chaney two or three months after that at that work, after selling out, and Mr. Woods for thirty days or more. All the collections which I made are entered in the books. Mr. Chaney was a book-keeper for the concern before Mr. Hanneman went out. He went in October, 1887. He remained as book-keeper till I sold out.

Miss Belle Green was the cashier in the store. She commenced work there very soon after the business opened, and she has been there ever since, being now with the Bast people.

The overdraft at the bank against the firm of Hanneman & Company on the first of December, 1887, at the time I had the conversation with him, was $6,000 or $7,000. I remember the occasion of Mr. Hurd handing me the letter or notice from Mr. Hanneman. I don't remember presenting the paper to Mr. Hanneman that he testified about, wherein it was provided that he was to assign to me the whole of the business and whatever assets might belong to Hanneman & Company. I never said to him that both of us could not stay under the same roof, nor did I tell him that one of us had to die, nor was I ever abusive to him, nor did I put my hand on my hip pocket. I did push him on the sidewalk. I did not read the paper that Mr. Hurd handed me. This letter which you show me marked S. A. M., I identify as being a letter which I wrote, placed in an envelope and put a stamp on it and gave it to Mr. Chaney to place in the post-office.

Said letter was thereupon introduced in evidence, to wit:

"S. A. M."

SALT LAKE CITY, *May* 16, 1888.

C. L. Hannaman, Esq.

DEAR SIR: The firm of Hannaman & Company is dissolved. The business hereafter will be carried on by the undersigned.

Very respectfully, L. C. KARRICK.

Defendant Karrick on his cross-examination said: I found the business in bad shape when I returned from the East in 1886. The foreman of the laundry was on a drunk. My attention was called to it by a young man in the store a few days afterwards. I did not discharge the foreman. I put somebody in his place, whilst
127 he was on a drunk. The foreman was not John Brooks. John Brooks was the engineer. I think he has been there ever since. He was the engineer and fireman. Mr. Brooks was a competent man as engineer. The engineer is responsible for the care of the laundry machinery. Think he is the foreman of the laundry for Bast, Terry & Company. The same party has not been in charge of the machinery from the beginning of the partnership. A man by name of Gregory was there. I don't know just when he went in. I don't know who employed him and I don't know how long he was there. After Gregory was employed I think Brooks became foreman. I don't remember when that was. I think I insisted on Brooks being placed in charge of the laundry and on having Henry discharged. In having Brooks promoted to the foremanship of the laundry, (Henry was the old foreman, the one who was drunk whilst Hanneman was gone) I put the man to look temporarily after the business while Henry was drunk, and when Mr. Hanneman returned Brooks was given the position; not really as foreman, because Mr. Hanneman was there a good deal of the time,

but he gradually worked into it. It was the business of these men to see that the laundry machinery was kept in proper condition. They worked under instruction.

In the fall of 1887, in November or December, I investigated the condition of the business. The laundry was very much out of condition at that time, caused by wear and tear and use. Mr. Chaney was book-keeper. He is my cousin. I had full confidence in him. He was faithful to the firm. The laundry was out of repair, insomuch that I did not consider it worth fifty cents on the half estimated worth. Mr. Chaney was then book-keeper. Miss Belle Green had charge of the cash. Mr. Brooks and Gregory were in the laundry. A good many were in the employ of the firm at that time whom I can't mention. I looked considerably after the con-
128 cern personally in the latter part of 1887. I did not know about taking the inventory of the stock. I gave no orders with reference to taking it. I did not have charge of keeping the books in 1887. I did not have Mr. Chaney in that position. I suggested him to Mr. Hanneman as book-keeper, and I sent for him and introduced him to Mr. Hanneman, and he worked under Hanneman's direction entirely in keeping the books. The books were kept in a satisfactory condition while he was there. I did not give charge of it at all. I suppose the entry in the books, "To laundry plant, loss one per cent. from its value; loss by use," made on January 1st, 1888, was intended to represent the loss, but I did not have anything to do with making the inventory. I instructed Mr. Brooks to do that.

The estimate that was put upon that appraisement was not fifty per cent. loss. I thought it advisable to keep the appraised loss low, because I was intending to sell out.

I think the bank account of Hanneman & Company was opened with McCornick in 1886. I cannot answer whether the firm moneys were deposited to that account after it was opened. I gave no orders whatever at the time Hanneman and me went East about the deposit of the receipts during the absence in the East of Mr. Hanneman and myself. I don't know to what account they were deposited; I can tell by looking at the books. I suppose Mr. Hanneman had a personal account at McCornick's. I don't know that he drew against that personal account to the extent of about $3,000 while he was East. He has never explained the transaction of expending on firm account $3,800 while he was East. The ground of my dissatisfaction was that he used $800 for private purposes. At this time the fact of the business was Mr. Hanneman's private account was the company's account, because he was in business a month before that; the company's business was done in his name.
129 Under his instructions I had nothing to do with the business at that time. I don't know when the inventory was taken in 1886; Mr. Hanneman gave the instructions concerning that. Mr. Hanneman told me the basis of valuation on which the inventory in 1886 was taken. I made no investigation of these goods upon my own account before I bought them. I did not employ Mr. Gillespie to look over the goods. Hanneman employed him to assist

in the purchase; to get the price down as low as possible. I don't think I employed him independently of Mr. Hanneman; I am sure he was employed jointly. I don't know how much he was paid. I saw Hanneman give him a check for fifty dollars. I did not direct Hanneman to give him a check for $50. Mr. Gillespie was not employed as my personal representative to attend to that purchase. He was employed in the interest of both of us. I don't know how long Mr. Hanneman had been operating the laundry before I bought in with him. I don't know anything about my accounts due Hanneman before I bought in. I don't know what became of any receipts that belonged to Hanneman while he was East. Mr. Pierce performed the work of taking the inventory in 1887. Mr. Chaney assisted him. I did not assist. Mr. Pierce was a competent man for that kind of work. I think the basis of their valuation in taking that inventory was full cost and transportation. I don't think they examined into the condition of the goods in taking that inventory. They did not more than count the goods. I thought there should be a reasonable cut made for wear and tear. I did not speak of it. I had nothing to do with making the inventory. I did not have the dilapidated condition of the goods taken into consideration in taking the inventory, because on a dissolution it was not material whether the goods were worth much or little, I would have to pay the indebtedness. It is customary always to take an inventory on the basis of cost and transportation.

130 Mr. Pierce did not mention the fact to me nor call my attention to it that the shirts were unfit for the market or worthless, and so with all the things I have mentioned. I had a definite agreement with Mr. Hanneman, unless he complied with certain conditions at the expiration of sixty days, that the firm was to be dissolved and I was to take possession. I felt it a matter of precaution to write him in May, 1888, telling him the partnership was dissolved; the precaution that if he had any redress, to commence it then and there. If he had any objection to my taking possession and holding under the option to show it. I did not know whether he was willing to go ahead under the agreement or not. Mr. Pierce was employed first to look after the hat department, and afterwards also in the furnishing goods department. This took place in 1887. Mr. Pierce did not know much about furnishing goods when he first came in. The conversation which took place in the office, near the stove, took place the latter part of November or first of December. We were disturbed by customers coming in, and we retired into the office. There were present, across the little hallway, the width of this desk and shelf, Mr. Chaney, and Miss Green was on the opposite side. I think Mr. Hanneman began the conversation there. He said he would take an option on my interest in the business. I don't know as I can quote his exact language, and if after the expiration of sixty days he did not pay me the money that I had put into the business then, if I would pay all the indebtedness of the concern and release him from the $5,000 note, that he would retire from the partnership and I might take the business. I told him I would accept the proposition. I don't know that that was all that was said;

there was some dickering first about this $5,000 note. We had had conversations before that in respect of a dissolution of buying or selling. I don't know just how long before that, but I think we were both desirous of winding up the business in some manner. I
131 don't remember when it was I had a conversation with Mr. Sprague about this matter. I had him draw up a chattel mortgage. I don't remember when it was. I don't remember whether that was after we had a conversation by the stove or not. I don't remember that this chattel mortgage was drawn by Sprague in January, 1888. I don't remember whether I ever presented it to Hanneman and demanded that he sign it. I don't think Hanneman ever told me he would not sign it till he had consulted with his attorneys. I don't remember that he took it to the office of Sheeks & Rawlins. I do not remember the fact that he took it back and told me he would not sign it. It is not true that after he declined to sign that chattel mortgage to secure the payment of that $5,000 with interest, that I said to him that you would demand of him that he sign an agreement with me and turn over the business to me and I pay the debts. I did not present a paper-writing to Hanneman to the effect that he should assign to me all his interest in the business, and that I should assume all debts and liabilities, and demand that he sign it, in the latter part of January or first of February, 1888. I wrote such a paper in November, 1887. I wanted Hanneman to sign it. At that time he refused to sign it. He did not decline to sign various propositions in view of a dissolution. He did not say he would sign it. I shoved him out of the store in February. He caused me to be notified after, that he was ready to go on with the agreement, and I notified him again in May that the firm had dissolved, as an extra precaution. After that I charged the firm of Hanneman & Co. with interest at 8 per cent. per annum on the $15,000, for the simple reason that I had two accounts, one L. C. Karrick, personal, and L. C. Karrick, store, and I kept the store account entirely separate from the personal account. That is the only reason. All these books are L. C. Karrick, store account. Whenever I took anything out of the store I aimed to make
132 it personal. These books were all store accounts. The books were carried on just the same after the dissolution. The system of keeping the books was just the same except the name was different. Every expenditure made on account of the business was put in the books, and everything drawn out. These books so far as I know show an accurate representation of all expenditures made by me after that date, and they contain an entry of 8 per cent. on the $15,000 after February, 1888.

On his redirect examination, defendant Karrick said: The difference between the duty of foreman and engineer of the laundry works was that the foreman had entire charge of the laundry, that is, the getting out of the goods, the washing. The duty of the engineer was, as I understand, to look after the fire, running the engine and watching over the machinery. He had no direction over the help. Henry was foreman whilst Hanneman was East. Henry had charge of the laundry department. This paper, which

was prepared by me concerning the dissolution, was prepared prior to the conversation in November. I presented no paper of that character to him afterwards.

Defendant, by his counsel, here offered the paper marked Exhibit "A 4," in evidence.

Thereupon defendant Karrick called as a witness in his behalf, GEORGE O. CHANEY, who being sworn testified as follows: I am acquainted with plaintiff and defendant in this action. I was once in their employment. I commenced in October, 1887, and continued till the business was closed up. The first two or three days I was there I was in the marking-room and after that I kept books; was in the cash office. When Miss Green was out I was making change. I was pretty familiar with the books of the firm. My
133 profession is an engineer, but I had kept books some at Kansas City and kept books here. I studied book-keeping. I am not a professional book-keeper. My knowledge as book-keeper is such as I think as would enable me to render a true statement of the transactions of the firm. I have examined the books with refence to making such statement. I have read over the contract of partnership in connection with this statement. I made some examination of the cesspools in 1887. They were overflowing and the water was filling the yard and ran down into the Auerbachs' back yard several times. It used to clog up under the floor and raise up in the laundry, and made a very disagreeable smell. They dug a cesspool after I went there.

There were additions made to the machinery after I went there. There was several new washers, a new collar and cuff starcher and a shirt-ironer, and what is called a but-ironer. He bought a new range in place of the stove which was burned out. A good deal of this new machinery came in during the summer, I think of the year 1888. The books contain accounts of these purchases. I was present when the inventory of the stock was taken in January, 1888. I simply took down the figures which were read off to me by Mr. Pierce, and helped him in adding them *them* up. I did not see a good many of the goods. Afterwards, in February of 1888, Mr. Pierce and I made a thorough examination of the goods. We looked all over the goods and remarked them. I then had an opportunity to see the condition of the stock in trade. My observation was sufficient to enable me to some extent to determine as to whether the stock had been kept in a saleable condition. There were a great deal of goods under the counter, which were dirty; quite a number of goods in the cellar which were dirty and stained, some of which were rotten. There were some woolen goods which were moth-eaten. We found a large number of jersey jackets,
134 six large drawers full. We recleaned and dried a lot of the goods in the cellar, but some of the goods in the cellar had been rotten. There was a large quantity of Coon & Company collars there. They were on a table about two feet wide and eight or ten feet long, and cuffs also were piled up that way.

Quite a number of custom-made shirts were under the counter,

which customers had refused to accept; I should think thirty ordinary boxes, some had a dozen and some more. In marking the goods we placed both a cost and selling price on the package. The damaged shirts we did not mark at all. We took the marks off the boxes, and relaundried them and sold them for what we could get. Some of the jersey jackets were sold and some were there when I left the store. They were considered unsalcable. The cuffs and collars were scattered out on the table and sold. They were sold at twenty-five cents per dozen. That was the cost price. In remarking we discovered a broken condition in the hats. We had a lot of hats out of style. We put them in the boxes all one size and sold them for what we could get. I mean by broken condition of hats that the stock was not in condition to fit a customer with a hat, either in size or shape. The intermediate sizes had all been sold out. I examined the underwear. There was a lot of odds and ends among the underwear. He had shirts and no drawer-like them, drawers and no shirts like them, which were supposed to go in suits. That is, there were very few suits of the same size in the same kind of goods. I heard the testimony of defendant Karrick with reference to a conversation which he had with plaintiff at the store, 142 South Main street, in the latter part of November, or first of December, 1887. I heard part of that conversation; I was in the office at the time it started, and I went into the laundry. It started at the stove, and when I came back Mr. Hanneman and Karrick were in the office. I
135 / went to the cash office. The cash office is across a small passageway from where they were. It was probably a distance of six or seven feet. There was a door in the office where I stood, and the other office had a door in it, which, if I recollect rightly, was partly open. Mr. Karrick and Mr. Hanneman had quite a wordy discussion. I heard Mr. Karrick tell Hanneman that it was not run in a satisfactory manner to him, and that he wished to dissolve the partnership. Those were not the exact words, but that he wished to close the business up; and he offered a proposition to Mr. Hanneman and said: "Then I will give sixty days to raise the money to buy me out, and if the money is not raised in that time I will take the business and pay all the debts." He says, "Is this satisfactory to you?" and Mr. Hanneman said it was; I attended some to the collection of outstanding accounts on the petty ledger. I attended to that all the time after Mr. Karrick took charge. The books show the amount of collections that were made. The statement about January 1st, 1890, shows $7,237.61 of petty-ledger accounts, $5,232.48 collected, leaving $2,513.13 uncollected; that is about correct. The books of the firm show a statement of the amount which has been charged up to profits and loss.

On his cross-examination witness said: I became book-keeper in October, 1887. I investigated and made an examination of the stock with Mr. Pierce in February and March, 1888—that is, of its condition. When I went to retake stock I was told to investigate it there. That was in February or March after Mr. Hanneman

went out. During the time I was there Mr. Pierce had charge of the hat-sales department.

After Mr. Hanneman went away, Pierce had charge of ordering new hats. I heard complaints from the hat department after
136 Mr. Hanneman went out. I can't say that I heard complaints before he went out. In 1887 and 1888, before he went out, Mr. Hanneman attended to that. Mr. Pierce and Mr. Brown were the salesmen in the store. They took the articles and showed them and put them back in their places, and I suppose took care of them. I found a large number of large-size and small-size hats, with fewer intermediate sizes. I don't know how that came about. I don't know the cost of the jersey jackets, except what they were marked. I don't remember what these were marked at. I don't know how the Coon Company order for cuffs and collars came to be made, nor the reason for making it. I don't know when it was made.

Mr. Karrick was in and out of the store during 1887, when I was there, sometimes every day for a week, and then he would not appear for a week or ten days. He had access to the accounts that were kept. I could not say that he examined them in 1887; he could have if he wished to. He made no inquiry of me as to how the business was being conducted. He used to ask me sometimes how I was getting along, if I knew what I was doing. I don't know that he made any special investigation after the business in 1887. Pierce and me took the inventory in 1887. That inventory was taken for the purpose of ascertaining the condition of the business. In taking it I acted under Mr. Pierce. He had orders, but what they were I don't know. The talk in the store between Karrick and Hanneman occurred some time in the fall, and started over some discussion over some goods which Mr. Karrick was ordering for Christmas. That is all I can recollect with regard to the time. That was loud talking. There was no abusive language. In the talk near the stove the parties seemed not in good humor. Karrick said he did not like the way the business was running, and he would not stand it to run that way. That is all the words to that effect. They did not investigate the accounts then, whilst I was there. They did not make any inquiries to me
137 concerning the amount that Karrick had put in or the extent of the liabilities. In that conversation Mr. Karrick remarked the business was bankrupt. Mr. Hanneman then came into the office and got some figures. Mr. Karrick spoke something about the overdraft at the bank at the time. He remarked that he had to guarantee it in order to draw checks there. This was in November. I did not see if he had a letter from McCornick. I don't know whether the overdraft was due at that time or not. There was nothing said about McCornick demanding a guarantee for the overdraft. He simply made the remark, "I have to guarantee our overdraft at the bank." Karrick and Hanneman did not whilst I was there figure out the extent of the firm's liabilities. Nothing was said, that I heard, as to the amount which Karrick had in the business. There was nothing said which I heard about a chattel

mortgage; there was something said about a $5,000 note. Mr. Karrick said he did not like the way the business was run, and he wanted it settled up, and that the partnership must be broken; something to that effect. I thing they were standing up by the stove when that remark was made. It was in the fore part of the conversation that I heard that. I could not say who commenced the conversation at the stove. Mr. Karrick said they were losing money. I did not see him make any special investigation of the books before that conversation. He said in that conversation that he had to guarantee the overdraft at McCornick's bank. Mr. Karrick told me afterwards about the circumstance of a letter being handed to Mr. Hanneman at the office. I knew nothing about it myself. The letter Karrick spoke of was said to have been from McCormick and that McCormick had noticed the firm that the overdraft was getting too large. Karrick told me this some time after Hanneman left. He never told me that he had gone to Mr. Barnett and suggested that Barnett write that letter.

I never heard that statement from any person. He
138 did not tell me that he put up that game on Hanneman and that Karrick remained in the office watching the effect of the letter on Hanneman. Karrick did not tell me that the only complaint that was ever made by McCornick about the overdraft was about the time the letter was written. I cannot repeat that conversation word for word. I think Mr. Karrick came into the store and started the conversation. He said the business was losing money. He said the stock was in bad shape. He made the remark that the business was bankrupt. He said something also in regard to the bank. Regarding the fact that they were always overdrawn here, he says: "I have to guarantee the account." I don't know as those were the exact words, but the words were to that effect. I then went out into the laundry for something. When I came back they had adjourned to the office. In order not to interfere with them I stepped into the cash office and stood there. My work was in the office where they were, but they occupied it. I listened to what was said. Mr. Karrick was still talking about the condition of the stock. He was talking loud. I should judge he was angry from the tone of his voice. Karrick spoke something about himself, in paying the debts of the concern. He said he did not want it, and they had some talk as regards the worth of it. Mr. Hanneman said that the business was paying and that the stock was not in as bad shape as Karrick said it was, and he may have given him some figures. I know Mr. Hanneman had gotten some figures from the books while I was there. Mr. Karrick made the remark: "I will give you sixty days to raise the money to buy me out, and if you don't raise it in sixty days I will take the business and pay the debts. Is that satisfactory?" In reply to that Mr. Hanneman said, I think he said, "it was." To the best of my recollection he said it was. He assented to it. He, at any rate, during the conversation
139 said if he could raise the money he would buy it out. I could hear all that was said. Hanneman talked in a reasonable tone of voice. Shortly after Karrick got up and went out.

And they had some further talk about business and the $5,000 note. They talked as much as ten or fifteen minutes after. I can't remember all they said in that time, but it was in regard to Mr. Hanneman retaining some money, or something which was to be returned to him. I don't know what it was, but they made reference to a $5,000 note. When I was in the cash office I was only waiting for them to get out because they were occupying the office. I wanted to go to work. That was my office. My work was there. I may have spoken to Karrick about this conversation. I think I did directly after the conversation. I heard nothing said about putting this agreement in writing. I did not know of Karrick afterwards putting the agreement in writing and asking Hanneman to sign it.

On his redirect examination witness said: I remember the letter of the 16th of May, 1888, being written. Mr. Karrick wrote it and showed it to me and directed it, and I carried it to the post-office and mailed it. It was stamped sufficiently.

Thereupon defendant Karrick called as a witness JOHN BROOKS, who, being sworn, testified as follows: I am employed in managing the Brown, Terry, Woodruff Company's laundry. I have been in the laundry business eight years past. I worked for Hanneman & Company as a laundryman some time in 1886. I was here at the time Karrick bought in. Before that I had worked for Hanneman at 142 Main street, in the rear of the furnishing store. When Mr. Karrick bought in I was engineer, taking care of the machinery and everything that was to be done, making myself generally useful. After that I was appointed manager of the laundry. I remember the time Mr. Karrick and Hanneman had trouble and Hanne-
140 man left the store. After that Mr. Karrick put in a new shirt-ironer, new washers and wringers. The occasion of getting new machinery was that we had to keep up with the times. It was necessary by all means to be supplied with that new machinery. The cesspools of course were filling up, the laundry building was a shanty, the roof leaked like any old roof will leak, the machinery was like machinery would be after being used that long.

On his cross-examination witness said: It was necessary to buy those new things, because if we did not obtain it we should have been back numbers. I was connected with the laundry business before Mr. Karrick for some time. I was familiar with the business after they formed their partnership. The business of the laundry ran along just about the same for some time. It did not increase or fall off. The laundry business increased about the time Mr. Karrick decided to put in this new machinery that I have spoken of. I think in 1887 Mr. Karrick commenced to take an active part in the charge of things. I think it was in 1887 that he told me I would be foreman in the future.

On his redirect examination witness said: It was after he and Hanneman had trouble and Hanneman had left the store that Kar-

rick told me to look to him. I don't recollect the year. I can't tell without looking at my old book.

Since the adjournment I have looked to those dates. I find that it was in the spring of 1888 that Karrick interested himself in the laundry and cesspools. Those last two cesspools were dug in the spring of 1888. The two that were connected by a tunnel were dug in 1887, in the early summer, I think. I never made any complaint to Mr. Hanneman about the condition of the laundry. I did not think it my duty to do so. I know the value of that machinery. It was somewhere about $5,000.

141 H. C. WALLACE, being recalled by the plaintiff, testified:

Assuming that instead of $7,327.61 being collected that only $5,253.48 was collected, and also taking into consideration the $5,000 that Mr. Hannaman owes Mr. Karrick on the partnership agreement, then the account would stand this way.

Mr. Hannaman's stock account shows a credit of $16,637.98, and it appears that the petit-ledger accounts have not all been collected, all except $2,005.13. Considering this $2,005.13 worthless accounts, one-half of it would be charged to each partner. Deducting one-half of $2,005.13 or $1,002.56 from Hannaman's stock account leaves a balance of $15,635.42; deducting from that amount the $5,000 due Mr. Karrick on the note mentioned in the partnership agreement, the net amount due C. L. Hannaman from L. C. Karrick is $10,635.42.

On cross-examination witness testified:

The statement above is based on the same theory and manner as before used in reaching the account between the parties.

Thereupon defendant called as a witness Miss BELLE GREEN, who, being sworn, examined by Mr. Hall, testified as follows: I
142 reside in Salt Lake City; have for eighteen years. I know C. L. Hanneman; have known him since I went to the store. I have been — the store five years the 12th of last May. I knew him as early as 1886. I know L. C. Karrick about the same length of time. I was employed at the store. I was in the office. I had charge of the laundry packages and gave people their laundry bills and received the cash that was paid in. I remember Mr. Hanneman left the store in 1887. I remained in the store after that, and have been there ever since. I remember a conversation had between Mr. Karrick and Mr. Hanneman last November or first of December, 1887, in the rear of the store. I heard Mr. Hanneman say he would buy Mr. Karrick out at a certain time, and if he did not do so, Mr. Karrick was to buy Mr. Hanneman out. I don't remember all the conversation. I think the time was sixty days. This conversation took place in the rear of the store in the office. I was just across the hallway, maybe five or six feet from them, when the conversation took place. I could hear very distinctly what the parties said; they were talking very loudly at the time. I think it was in the last part of the year that the conversation took place; I cannot remember positively. I remember when Mr.

Hanneman left the store. It was before that; I should think about sixty days; probably a little longer. I have been in the store five years. Until Mr. Ruff came in the store cash was received in the store. The laundry cash was received from my office. No cash books were kept by me. The cash in my department was kept on slips of paper under Mr. Hanneman's direction. I had no books for laundry collections. After Mr. Ruff came in I kept a daily ledger or blotter. Since Mr. Ruff left there has been a cash book.

On her cross-examination she said: I can't say what was done with the slips of paper on which the cash was entered. I don't know who kept them. I put them in the drawer. They were taken from the drawer at night and fresh slips put in. They
143 were taken from the drawer every night. I suppose they were taken by Mr. Hanneman. I don't know anything about what books he kept. He never gave me any instructions about them. I put the slips in the drawer. The next morning I would find new slips there. I put the slips in the drawer as I was told to. I did that till Mr. Ruff came in there. I don't know when he came there; it was after I came there.

There were two offices in the store; a little alleyway between the two. The alleyway is about six feet wide. I was in one of the offices. I don't know that I was doing anything particularly when this conversation between Karrick and Hanneman took place. It begun in front of the stove. I did not notice who begun it. The talk was loud. They were saying something in regard to the store and laundry. I can't say exactly what it was, but it was the way the laundry was run and the store—the way things in the store were kept. There was loud talking. They seemed to be pretty angry; at least Mr. Karrick seemed angry. I don't know as he was abusing Mr. Hanneman; I don't think there was any abuse; he talked very loud. I don't know as the language was insulting at all. The conversation did not continue long. They went from the store to the office; there the loud talk still continued. The whole conversation, or most of it, was continued in that loud tone clear to the end. I heard Mr. Hanneman say he would buy Mr. Karrick out, and if he did not do it in some certain length of time, that Mr. Karrick was to take the business. I heard that language used in the office. Karrick said he would do so. They said it was to be done in a certain length of time; as near as I can remember sixty days. That if Mr. Hanneman did not buy Mr. Karrick out at the end of that time, Mr. Karrick was to take the business and pay all debts that were then owing. They were in there a
144 long time. That is all the conversation that I can remember. I did not hear Karrick say that he was going to smash the partnership agreement. I did not hear him say how much money Hanneman was to pay Karrick in sixty days.

I have not talked with any one about what I have heard there. No one has ever mentioned to me the question of what I heard in that conversation since November, 1887, till the present time. Judge Powers has never mentioned that subject to me; nor Mr. Hall, and

none of my present employees: nor Mr. Karrick. I remember that Hanneman said he would buy Karrick out if he would give him sixty days. I remember that particular part distinctly, because I thought there would be a change in the firm; made quite an impression on me at the time. I remember distinctly hearing those words. I remained in the store after that time. Continued in Mr. Karrick's employ. I was there when Hanneman left. I remember there was trouble between Karrick and Hanneman prior to that conversation. I did not hear any fuss after that. Mr. Hanneman said, "If you will give sixty days I will buy you out," in a loud voice. This part of the conversation I heard after they went into the office. I don't think it was said in the beginning of the conversation in the office.

On her redirect examination witness said: The only reason I remember so well is that, at the time, I had a personal interest in the firm. At that conversation I heard only what I have repeated about the dissolution of the partnership.

Hereupon a paper marked Exhibit "A 5" and Exhibits "D" & "E" were admitted in evidence.

Here insert same.

Thereupon defendant called witness, GEORGE O. CHANEY, who testified as follows: I have made an examination of the books of
145 Hanneman & Company as to how they appeared on the first of January, 1888. I can state therefrom some of the resources of the concern on that day. I have a statement here. The resources on that day were merchandise $20,150.15, accounts receivable $2,650.60, store accounts; accounts receivable laundry $2,331.83; dye works $340.90; O. J. Brown $44.90; G. O. Chaney $48.35; J. R. Woodbury $15; store fixtures $2,548.28; plant $11,145.15; dye works $2,283.03; P. E. Gordon $564.43; sundry petty accounts $24.10. The sum total of the resources, January 1, 1887, were $42,106.10.

The liabilities that were against that firm, were: W. A. Parote & Bros. $15.00; C. L. Hanneman $5,326.34; L. C. Karrick $24,084.51; W. W. Pierce $15.55; R. R. Street $121.97; Earle & Wilson $109.50; Wilson Brothers $2,109.30; Clute, Coon & Company $85.51; Miller & Evans $100.50; McCornick & Company $6,972.57; G. F. Culmer & Bro. $140.13; Dolph Company $7.50; Coon & Company $372.25; Sprague, Warner & Company $36.75; Troy Laundry Company 18.35; J. R. Lowery & Company $341.23; Able, Beck & Fritzgerald $369.79; shirt company $73.75; Studebaker Bros. $75.00; cash balance account pay-rolls $258.70. The sum total liabilities on January 1, 1888, were $40,595.78. The excess of resources over liabilities were $1,510.78. These figures are correct to the best of my knowledge. I have examined the personal account of Mr. Hanneman from February 1, 1886, to January 1, 1888. The paper which I have in my hand gives the result. I got it from the books. To the best of my knowledge it is a correct transcript from the books. I have the average monthly balance of Mr. Hanneman for the twenty-three months, from February 1, 1886, to January 1, 1888;

for that time it is $4,224.48. I have made a computation of the average monthly balance standing to his credit for the twenty-two months, beginning March 1, 1886. It is $4,039.27.

146 Hereupon the said paper or statement was admitted in evidence and marked Exhibit "A 6."

The net profit of the concern for the year 1886, was $7,848.26; the net loss for 1887 was $3,417.35. In 1888 the net profit was $3,657.13. In 1889 the net profit on the sale of the business, and for the year was $17,690.51. The loss and fixtures *was* $2,824.47. The total loss from February 1, 1886, to December 31, 1889, was $6,237.82. The total profits were $29,195.90; that would leave the net profits $22,958.08. That includes the profit for the sale of the business and also assumes the petty-ledger accounts to be collectible. Not deducting anything from petty-ledger accounts, Karrick's one-half share of the profits in 1886 would be $3,934.18, for 1888 it would be $1,828.57. For 1889, $8,845.25. The total that it would foot up would be $14,597.95. From this deduct one-half of the loss for 1887 and 1889, namely $3,118.91, would leave $11,497.04. Figuring on the basis of one-half the profits remaining in the business for 1886, $3,924.13 would remain in the business. For 1888, $1,828.51; for 1889, $8,845.25, and the total would be $14,997.95. Now after deducting one-half the loss for 1887 and 1889, there is $11,479.04. That would leave to be equally divided, $11,479.04. One-half of that would be $5,739.52, and the two sums added would make $17,218.56.

Mr. Hannaman's original investment, as the books show, was $5,739.52, and that one-half of the profits would be $10,989.52. Now assuming that Karrick had loaned Hanneman $5,000, and deduct that from $10,989.52, would leave $5,989.52. I did not figure in the $2,000 paid by Karrick on the notes of Hanneman; there was nothing in reference to them in the books. I figured in the item of $2,000 on the books of February 1, 1886, in which Karrick was credited. On this calculation Karrick gets credit for $17,000 instead of $15,000.

147 On his cross-examination witness said: To the best of my recollection the amount credited to Karrick on the books as the one-half of the profits of 1886 was $2,924.13. I made the credit to Karrick $24,084.51 in the liabilities. If I deduct that $2,924.13 which was credited to Karrick in 1886, leaves $21,160.38. That is the amount credited by Wallace. In this $24,084 that I credited to Karrick, which is the original $15,000 investment credited to him. I did not deduct the $2,924.13 from the $15,000. I just simply took it as the books stated it; I did not change the books. They are that way. I just simply took a balance-sheet off.

Q. Now then, suppose you apply one-half the profits, $11,479.04, to repay the $15,000 originally advanced, and deduct that from the credit which you gave Mr. Karrick, that would reduce his credit just $11,479.04?

A. If you apply it that way, yes, sir.

Q. Now reduce Mr. Karrick's credit by that amount and then

divide the remaining one-half the profits, give Mr. Karrick credit for the reduced amount equally, between Hanneman and Karrick, what would be the result you have? Figure that please.

A. $12,605.47.

Q. Is that what you mean to state? You deduct that from Karrick's credit of $20,000. Now then that would just double the amount of Hanneman's credit, would it not, this amount to which Hanneman would be entitled, if you figure upon that basis?

A. Yes, sir.

Q. In your statement of liabilities at the end of 1887 you put it at $40,995.40; state whether or not that includes the investment made by both parties.

A. In that statement of the liabilities and resources?

148 Q. Yes, at the end of 1887.

A. Exclusive of profits it did. The investments were in the liabilities.

There is an item of $99.90 difference between my statement and Mr. Wallace's. I think I know how the difference occurred. There was a small safe in Mr. Karrick's possession January 1st, 1890, which was sold, and the proceeds should have been charged to Mr. Karrick, and not to profit and loss.

Hereupon the plaintiff, C. L. HANNEMAN, was recalled as a witness in rebuttal, and testified as follows: I was gone five weeks when I was East. I heard the testimony of Mr. Karrick as to the conversation that I denied I was a defaulter. I never had any such conversation with him. I never said that I had used any money of the firm. Karrick never made any investigation on his own account in 1887 as to the condition of the stock. It was necessary to put some of goods in the basement. We put them on benches—on boards or tables. In the summer we would put the winter goods in the basement, and in the winter the summer goods. That was necessary because of lack of room on the shelves. I know of things being stored under the counter. They were put under the counter because there was not room on the shelves. Of course they would get a little more dust on the boxes than on the shelves. They were the lowest-priced goods and it was impossible to put them on the retail shelves.

I heard the testimony about the broken suits. There is no man who can keep his line of underwear in sizes intact, unless he refuses to sell. Men do not always wear the same size shirts as drawers.

About the jersey jackets. We bought those from Mr. Yearian. There might have been some bought up afterwards. I don't re-

149 member. When the winter was severe there would be a good many of them sold. If the winter happened warm, the same rule applies to jackets as to everything else.

Prior to 1886 I had been exclusively in the gentlemen's furnishing goods business. Since 1873 at Chicago and St. Louis, and here in Salt Lake for Mr. Yearian. The investment of collars from Coon & Company turned out profitable. Whilst I was there I never heard of shirts getting rotten or turning yellow. When shirts are

in the store they will turn yellow at any time. All houses have shirts of that character which have to be relaundried if they want to keep them looking nice. That is the custom in every country.

The slips of paper on which the entries of cash were made during the day Miss Green would hand to me at night, and sometimes during the day, and I would enter them on the book. Then I would make out new slips that were put in the drawer, and in the morning she would start out with fresh slips.

I never told Mr. Karrick that the laundry business would pay twenty-five per cent. He said he wanted an investment that would pay eight per cent. I told him that I knew of an investment that would pay twice eight per cent. That was the extent of what I stated. I did not tell him that I would take care of the two $1,000 notes. Nothing was said about that in particular. I gave the notes of the firm. I don't know as I can recall all the conversation which occurred at the stove. He said he was dissatisfied and he was going to get his money out of the business; was going to wind it up. The business was not paying. I told him the business was paying. I told him that every month in 1887 the business in the dye-works laundry and store was larger than the corresponding months of 1886. That we made a profit of several thousand dollars in 1886 with a much less volume of business. And I therefore felt justified in stating there was a profit in the business. But he did not quite agree; never did in any of those propositions. I told Mr. Karrick that if he was dissatisfied with the business I would buy him out, and he said before this, stating he wanted to go out and wanted to draw his money out, and I told him that if he was dissatisfied I would buy him out. When he saw that I talked like that he turned right around and said right away, I will smash our agreement first. Did not say he would abate the agreement, but smash it first; and he further said that he would leave me without a dollar. He also said that I had told him the business would be a good business, a profitable business, and I had deceived him; and that he had talked with Mr. McCornick and that he had recommended him to me. That was all there was about an agreement. After that I continued in the store up to the time he pushed me out, the fore part of February. He did not say in that conversation what he would do at the end of sixty days if I did not buy him out. He did not say I was to have sixty days to buy him out. He did not say that if I did not buy him out at the end of sixty days I was to turn over the business to him, or that he was to surrender the $5,000 note. We did not agree that I should buy him out at any price. He did not agree that he would sell out to me in sixty days. He expressly stated right at the start that he would smash our agreement first. He asked me to go down to Sprague's office February 1st, 1888, and sign the chattel mortgage to secure the $5,000 note. After this conversation Mr. Karrick seemed to take upon himself more management; to give more orders than he had heretofore.

On his cross-examination witness said: I did not make him an offer. I told him if he was dissatisfied I would buy him out. He

said to that: "No! I will smash the agreement first." Our conversation was with reference to a desire on the part of Karrick
151 to close up the partnership; and when I proposed to buy him out he said he would smash the agreement first. That part of the conversation took place near the stove. There was nothing said in the office after we adjourned to the office about buying or selling; that part of the conversation stopped when he said he would smash the agreement. Nothing was said about waiving the profits. He said he wanted to get the money out that he had put in; he said he would sell out; he was willing to sell out; he was willing to sell out if he could get what he put in; he did not offer to let me buy him out; he was dissatisfied with me; shoved me right off.

He did not propose that I might have sixty days in which to pay him the amount of money that he was out in the partnership, waiving the profits and the $5,000 note; nor that if at the end of sixty days I did not pay this amount that then he would take the partnership business, agreeing to pay the debts of the concern or to waive the payment of the $5,000 note which I owed him. There was no proposition by Karrick to me in the office, that I remember of, with reference to a sale of his interest, and no proposition that I would take his. Nothing was said about it at all. I did not enter into the conversation very much; he was doing the largest part of the talking. I asked him not to talk so loud, that I did not wish Miss Green to hear it. I thought his conversation was unbecoming a gentleman to allow a lady to hear it. That is all I know about it.

The foregoing was all the testimony in the case.

All evidence in the case being closed, thereupon the case was argued by the counsel for the respective parties and submitted to the referee for his decision thereon.

And thereafter, and on the seventh day of October, 1891, the said referee having had the said cause under advisement, and having fully considered the same, made and filed his findings of fact and conclusions of law herein, which *is* as follows:

(Here insert findings of fact and conclusions of law.)

152 & 153 And thereupon a decree in this cause was made and entered on the same day.

(Here insert the same.)

Thereafter and on the 16th day of October, 1891, and within the time prescribed by law, the defendant L. C. Karrick made and filed his notice of intention to move for a new trial in this cause, upon the following grounds:

1. Insufficiency of the evidence to justify the findings and decision of the referee.

2. The decision of the referee is against law.

3. Errors in law occurring at the trial before said referee and duly excepted to by the said defendants.

(Here insert said notice of motion.)

And thereafter and on the 26th day of October, 1891, the said parties stipulated that the defendant Karrick should have twenty days additional time or to and including the 16th day of November, 1891, in which to prepare, file and serve his proposed statement or motion for a new trial in this action; and thereafter, and on the 16th day of November, 1891, the plaintiff stipulated by his counsel, that defendant Karrick should have to and including the 26th day of November, 1891, in which to prepare, file and serve his statement or motion for a new trial in this action. And thereafter, by orders of the said district court, duly made and entered, the defendant Karrick was given to and including the 12th day of December, 1891, in which to make, prepare, serve and file said statement.

On the foregoing statement of the evidence of the proceedings in this case, the defendant Karrick now assigns and specifies the following errors on which he will rely on his said motion for a new trial:

1. Insufficiency of the evidence to justify the third finding of fact of the said referee.

2. And also insufficiency of the evidence to justify the fourth finding of fact of the said referee hereinbefore set out; also insufficiency of the evidence to justify the fifth finding of fact of the said referee,

3. Also insufficiency of the evidence to justify the seventh finding of fact of the said referee.

4. Also insufficiency of the evidence to justify the eighth finding of fact of the said referee.

5. Also insufficiency of the evidence to justify the ninth findings of fact of the said referee.

154 6. And also the tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth and nineteenth findings respectively of the said referee.

7. The evidence does not justify the third finding of the referee, to the effect that about February 1st, 1888, the defendant Karrick took forcible, wrongful and exclusive possession of all of said business, stock, partnership books and accounts and premises upon which the same were situated, and forcible and wrongful- ejected the plaintiff therefrom. And thereafter prevented further proceedings in said business, and to perform his said agreement;

9. Because, the evidence shows that on or about the 1st day of December, 1887, the said partners entered into an agreement, whereby it was agreed, that if, in sixty days thereafter or on or about the 1st day of February, 1888, the said plaintiff did not buy out the said defendant Karrick, or raise for him the money he, defendant Karrick, had theretofore invested in said business, that the said partnership should be dissolved by the plaintiff going out and leaving said Karrick in possession of the same; the evidence further showing that said plaintiff did not perform his part of the agreement of December 1, 1887; and thereby on the said 1st day of February, 1888, the said partnership became, and was at an end.

10. The evidence does not justify the fourth finding of the referee,

because the evidence shows that the partnership agreement referred to in said fourth finding and as hereinabove specified, was dissolved by an agreement of the parties.

11. The evidence does not justify the fifth finding because the evidence does not show that defendant Karrick ever at any time appropriated any of the proceeds, capital, profits or assets of
155 said partnership to his own benefit that belonged to the plaintiff in this suit.

12. The evidence does not justify the seventh finding because there is no evidence to show that the unadjusted or undivided profits of said partnership are $22,858.18, or any sum of unadjusted profits between the said partners.

13. The evidence does not justify the eighth finding of the referee because there is no evidence in the case to show that upon an accounting between the partners the sum of $12,040.53, or any sum, would be due from defendant Karrick to plaintiff Hanneman.

14. The evidence does not justify the ninth finding of the referee to the effect that said partnership was never insolvent or heavily in debt, that plaintiff was not either owing said partnership a large sum of money, or that plaintiff was never insolvent, or was either owing defendant Karrick no sum of money that was due during the existence of said partnership; or that said partnership was not dissolved while said L. C. Karrick attended said business.

15. Because the evidence shows that the said partnership was heavily in debt and was insolvent at about the first of February, 1888, and prior thereto. And that plaintiff was then owing said partnership a large sum of money; and that said partnership was dissolved while said Karrick was in connection with said business, it having been dissolved as the evidence shows about the first day of February, 1888.

16. The evidence does not justify the tenth finding of the referee, because the evidence shows that the defendant Karrick, was deceived by plaintiff as to the profits in the Yearian business and the laundry, and the defendant was thereby induced to purchase the same.

17. The evidence showing further that the plaintiff mis-
156 represented to defendant Karrick the amount of profits, by both businesses, would yield and were yielding. The evidence showing that plaintiff represented to defendant Karrick that the profits of the said businesses were as much as 25 per cent. per annum on the investment, when up to that time there was little or no profit on either of said businesses; and in making such purchases defendant Karrick relied on the representation of Hanneman, and did not investigate the matter from any independent source.

18. The evidence does not justify the eleventh finding of the referee, because the evidence in the case shows that the two $1,000 notes, called the Yearian notes, were not partnership obligations and were not taken up by defendant Karrick and paid in the course of partnership business, and the evidence shows that the said notes were the personal and individual obligations of the plaintiff which he promised defendant Karrick he would pay as his own individual notes.

19. The evidence does not justify the twelfth finding of the referee, because the evidence shows that the plaintiff did absent himself from the business longer than was reasonably necessary, and that he did not take care of the stock in trade and the premises and the machinery while he was with the same with reasonable skill, carefulness and attention, and that he did not keep proper books of account. The evidence showing that at one time he was absent from said business as many as six weeks when he had promised to be absent but two. That during the year 1886, whilst he was in the exclusive management of the business, he kept the cash account on loose slips of paper, and that during his connection with the said partnership he permitted large quantities of the stock to become soiled and rotten, and the machinery in the laundry to become out of repair, and the cesspools to overflow.

157 20. The evidence does not justify the thirteenth finding of the referee wherein he finds to the effect that the plaintiff accounted for all money he expended while East in 1886, and properly entered the same on the partnership books, and that any money he expended other than partnership was properly entered and charged against him on the partnership books, because the evidence shows, that a sum exceeding $800 was expended by plaintiff while East in 1886 out of the partnership business, for his personal use and benefit, for which he never rendered any account nor gave any explanation to his said partner.

21. The evidence does not justify the fourteenth finding of the referee to the effect that defendant Karrick told the plaintiff to take such sums of money and articles of merchandise as he needed out of the business and then to deposit or pay the account when convenient, and in pursuance thereof plaintiff overdrew his account in 1886, because the evidence shows that defendant Karrick expressly objected to said overdrafts, and said overdrafts being also contrary to the articles of copartnership. The articles provided for the sum of $1,500, to be drawn out of the partnership for each partner annually during the existence of said partnership.

22. The evidence does not justify the fifteenth finding of the referee to the effect that the defendant Karrick was not obliged to increase his investment to keep up the credit of his said partnership or to meet any overdrafts of the plaintiff, because the evidence shows that the defendant Karrick was obliged to make increases of investments and advances of money to keep up the credit of the partnership and to meet the overdrafts of the plaintiff, and the evidence shows that the two $1,000 Yearian notes were taken up by defendant

158 Karrick for the purpose of protecting the credit of the firm. Moreover, the said $2,000 was paid in addition to the $15,000, which latter sum plaintiff represented to defendant Karrick he had paid Yearian for the stock in the store, instead of $17,250, which he represents in his evidence in this case he paid thereafter.

23. The evidence does not justify the sixteenth finding of the referee, wherein he in effect finds that the defendant Karrick never agreed at any time with plaintiff that the plaintiff might purchase or take defendant Karrick's interest in said partnership in sixty

days, or any time for any sum or on any terms at all. Nor that if the plaintiff did not so purchase that defendant Karrick should take the business and pay the debts, or take the business on any other terms or at all; nor that said partnership should be dissolved on the terms alleged or any terms at all, because the evidence by a great preponderance conclusively shows that defendant Karrick did agree with plaintiff on or about December 1st, 1887, that plaintiff might purchase defendant Karrick's interest in said partnership business in sixty days by paying him, Karrick, the amount of money which he, Karrick, had then already put into said concern. And plaintiff and defendant Karrick then agreed that if plaintiff did not on these terms purchase in sixty days the interest of the said Karrick in the said partnership business that Karrick would then take the business and pay all the debts of the concern, and also forgive him, Hanneman, the $5,000 debt evidenced by a $5,000 note which Karrick held against Hanneman. That thereupon the said partnership should be dissolved by the retirement of said Hanneman therefrom.

24. The evidence does not justify the seventeenth finding of the referee to the effect that the plaintiff never acquiesced in defendant Karrick managing the partnership business alone, or in selling the same, because there is no evidence in the case showing or tending to show that Karrick ever at any time undertook to or assumed to manage the partnership business alone or to sell the same.

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25. The evidence does not justify the eighteenth finding of the referee to the effect that the plaintiff did not know that defendant Karrick was going to sell the partnership business, and did not know of such sale until the same was completed, because there is no evidence in the case tending to show that defendant Karrick ever at any time sold the said partnership business.

26. The evidence does not justify the nineteenth finding of the referee to the effect that the plaintiff did not unreasonably delay in bringing this suit for an accounting, and in finding that the defendant Karrick was at all times fully and otherwise informed of plaintiff's claim to his interest in said business according to said partnership agreement, and of plaintiff's right and desire to participate in the management of the business, because the evidence in the case shows that the plaintiff never at any time after the first of February, 1888, when by the terms of their said agreement the said partnership had become dissolved, presented himself at the store or place of business of the former partnership, or ever spoke to the defendant Karrick about any accounting or settlement of the partnership transaction from that time to the bringing of the suit.

The defendant further specifies the following:

Errors of Law.

The referee erred in his first conclusion of law to the effect that said partnership was not dissolved before the same expired, February 3, 1891, by the terms of the said partnership agreement.

160 2. The referee erred in his third conclusion of law to the effect that there is due and owing said plaintiff from said defendant Karrick, in principal and interest, on the basis of divisions stated in conclusions of law No. 2, the sum of $12,040.53 on this date to wit, October 5, 1891.

3. The referee erred in his fourth conclusion of law to the effect that the said plaintiff is not estopped from asking and receiving relief in this action against the defendant Karrick.

4. The referee erred in his fifth conclusion of law to the effect that defendant Karrick should pay all the costs of this action to be taxed according to law, including agreed fees of the referee, herein amounting to $350.

Errors in Law Occurring at Trial.

And the defendant Karrick also specifies the following and excepted to by him, that is to say:

1. The referee erred in not sustaining the objection of defendant Karrick to the admission in evidence of the letter marked Exhibit "C" as disclosed on page 7 of this statement and in admitting said letter in evidence.

2. The referee erred in sustaining plaintiff's objection to the question propounded to the plaintiff by defendant as disclosed on page 15 of this statement.

3. The referee erred in sustaining the objection of plaintiff to the admission in evidence of the note to Robert Taucy and designated as Exhibit "H" as disclosed on page 22 of this statement, and in not admitting said last-mentioned paper in evidence.

4. The referee erred in sustaining plaintiff's objection to the question propounded by defendant to plaintiff as the same is set
161 out on page 29 of this statement, namely: "For what purpose did you devote the money which you realized on the Robert Taury note; did it go into the business?" Because said question was competent and relative to the issue in this case.

5. The referee erred in admitting in evidence against the objection of defendant Karrick, the deed from Louis C. Karrick and Sarah E. Karrick to W. H. Spafford, which is mentioned on pages 37 and 38 of this statement, and is designated as Exhibit "A." Because the same was immaterial and irrelevant, as was also the fact of whether the consideration mentioned in said deed was the actual consideration in said transaction irrelevant to any issue in this case.

6. The referee erred in sustaining the objection of plaintiff to the following question propounded by defendant Karrick to the witness Wallace as the same is set out on pages 52 and 53 of this statement, as follows: Question. The proposition which I desire you to figure out for the court is this: Taking the stock in trade as contributed to the business at its valuation, fixing the amount contributed by Karrick and the amount contributed by Hanneman; then take into consideration the business as transacted by the firm from the start up to the close as testified by you in this case. Devote one-half of the net profits to the repayment of Karrick on his $15,000, so far as

it goes, the other net profits went into the business and constituted a part of the business, except that Hanneman and Karrick each, after January 1, 1887, could draw $125 per month. Take into your calculation the amount of net profits which they drew, $1,500 apiece, and after you have made a summary charging Karrick with the management and control of the whole thing, give the firm credit for what he has taken out, also for what Hanneman has taken out; then divide the firm profits, four-fifths to Karrick and one-
162 fifth to Hanneman, and give us the result, please, as stated in this contract and explained by me.

7. The referee erred in sustaining the objection of plaintiff to the following question propounded by defendant to the witness Wallace, as the same is set out on page 63 of this statement as follows: Question: Then Mr. Karrick's credit being $21,000.40 and Mr. Hanneman's $10,923.43, will you be kind enough to state to the court how much Karrick would be owing Hanneman upon an accounting?

8. The referee erred in refusing the motion of defendant Karrick to strike out the answer of witness Wallace, which said answer and said motion are set out from pages 58 to 63 inclusive, of this statement.

9. The referee erred in admitting in evidence over the objection of defendant, the paper purporting to be a statement of the profits of the Bast-Terry Mercantile Company for the year 1890, as disclosed on page 66 of this statement, the said paper and the facts which it purport*ing* to show, not being relevant or pertinent to any issue in this case.

10. The referee erred it striking out that part of the testimony of the defendant Karrick, to the effect that whilst plaintiff Hanneman was absent, there was a draft on Hanneman & Company for money, to meet which the company had no funds, and that thereupon the defendant Karrick guaranteed individually the payment of said draft as disclosed on page 70 of this statement.

And the said plaintiff, C. L. Hannaman, and his attorneys, J. L. Rawlins and W. Van Cott, will please take notice that the said defendant Karrick proposes the foregoing as a statement of the case in said before-entitled action, to be used by him on his said motion for a new trial in this action.

POWERS & HILES,
W. C. HALL,
Attorneys for Defendant Karrick.

163 EXHIBIT "E."

$1,000.00. SALT LAKE CITY, *Feb.* 3, 1886.

Sixty days after date, for value received, I promise to pay W. H. Yearian, or order, one thousand dollars with interest at the rate of — per cent. per —— from —— until paid, and with ten per cent.

thereon attorneys' fees in case the holder is obliged to enforce payment at law.

Payable at Salt Lake City, Utah Territory. Due April 3, 1886.

(Signed) C. L. HANNEMAN.

(Endorsed on back:) No. 2. W. H. Yearian.

EXHIBIT "A 2."

$5,000.00. SALT LAKE CITY, UTAH, *Feb.* 3, 1886.

For value received, I promise to pay to the order of L. C. Karrick, on or before Feb. 3, 1891, and on the dissolution of the firm of Hanneman & Co., if it occurs before that day, the sum of five thousand dollars without interest.

C. L. HANNEMAN.

EXHIBIT "D."

$1,000.00. SALT LAKE —, *Feb.* 3, 1886.

Thirty days after date, for value received, I promise to pay to W. H. Yearian or order with interest at the rate of — per cent. per —— from —— until paid, and with ten per cent. attorneys' fees, in case the holder is obliged to enforce payment at law.

164 Payable at Salt Lake City, Utah Territory. Due March 5, 1886.

C. L. HANNEMAN.

(Endorsed:) W. H. Yearian.

EXHIBIT "H."

$1,111.80. SALT LAKE —, UTAH, *Sept.* 10, 1885.

Six month after date, for value received, we jointly and severally promise to pay to Thomas Lanktree, or order, eleven hundred dollars and eighty cents with interest at the rate of one and one-half per cent. per month, from date until paid and with ten per cent. attorneys' fees in case the holder is obliged to enforce payment at law.

Payable at Mutual Exchange bank, Evanston, Wyo. Due March 10, 1886.

(Signed) C. L. HANNEMAN.
W. H. YEARIAN.

(Written on face of note is:) Cancelled. Received payment in full Feb'y 27th, 1886. Thomas Lanktree.
(On back is marked Exhibit "H." S. A. M.)

DEFENDANTS' EXHIBIT "A 4."

This mortgage, made the 14th day of February, A. D. 1887, between Charles L. Hanneman, residing at Salt Lake City, in county of Salt Lake, Territory of Utah, mortgagor, and Lewis C. Karrick,

residing at the same place, in the county of Salt Lake, Territory of Utah, mortgagee.

Witnesseth: That the mortgagor being indebted to the mortgagee as follows: On a promissory not- bearing date, February 3, 1886, made by said Hanneman to said Karrick, for the sum of
165 $5,000.00, due and payable on the 3rd day of February, A. D. 1891, and on the dissolution of the firm of Hanneman & Co., if such dissolution occurs before the day last aforesaid, to secure the payment thereof, has granted, sold, assigned, transferred and set over, and by these presents, does grant, sell, assign and set over to said Karrick and his assigns forever, all those certain goods and chattels and interests therein, described as follows: All the right, title, and interest of said mortgagor, in and to the machines and machinery, stock and fixtures of and pertaining to the Troy steam laundry, also all the right, title and interest of said mortgagor in and to the stock in trade, merchandise and fixtures of the firm of Hanneman & Co., all said property being situate at No. 142 S. on Main street, in the city of Salt Lake, Utah Territory.

It is agreed that mortgaged property may remain in the hands of the mortgagor, but subject to the right of the mortgagee to take and hold possession of the same at any time he may deem himself insecure without possession.

In case said indebtedness and the interest thereon is fully paid at maturity and all costs and expenses incurred by the mortgagee, this mortgage shall cease, but in case default is made in the payment of the same or any part thereof, the said property or so much thereof as is necessary to pay the indebtedness and accrued interest to the day of payment, may be sold at public auction to the highest bidder, for cash, at any place in the county and city of Salt Lake, in said Territory, after giving notice of the time, terms and place of sale, by posting notices thereof in three public places in the precinct where the same is to be sold, not less than five or more
166 than ten days prior to the time fixed for sale. And the United States marshal, then in office of the Territory of Utah, or in case of his death, refusal to act, or absence from the said Territory, the sheriff of the county of Salt Lake in said Territory, then in office and acting as such sheriff is hereby appointed trustees of the parties, and upon default in payment of the indebtedness secured or any part thereof, is empowered as such trustee and upon the request of the holder, of such indebtedness, to take possession of said property and sell the same as aforesaid, and apply the proceeds of sale to pay: First: The expenses of sale, including his own lawful compensation and reasonable compensation for holding said property until sale. 2. All moneys paid by the mortgagee for taxes or to remove prior liens on said property with interest at one per cent. a month from the time of payment. 3. The said indebtedness or so much thereof as shall then remain unpaid, with interest to day of payment, whether the whole of said indebtedness shall have matured or not. In case a sale by said sheriff the sale shall be conclusive evidence of his rightful succession to said trust.

In witness whereof the mortgagor has hereunto set his hand and seal.

C. L. HANNEMAN.

In the presence of—
E. T. SPRAGUE.

167 TERRITORY OF UTAH, } ss:
County of Salt Lake, }

On this 14th day of February, A. D. 1887, before me, E. T. Sprague, clerk of supreme court in and for said Territory, personally appeared Charles Hanneman, personally known to me to be the person named in and who executed the foregoing instrument, and acknowledged he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

Witness my hand and official seal, at Salt Lake City, in Utah Territory, the day and year aforesaid.

E. T. SPRAGUE,
Clerk Supreme Court of Utah Territory.

TERRITORY OF UTAH, } ss:
County of Salt Lake, }

Charles L. Hannaman, mortgagor, and Lewis C. Karrick, mortgagee, being each duly sworn, both say: I am one of the parties to the foregoing mortgage; said mortgage is made in good faith to secure the amount and the indebtedness named therein and without any intent to hinder or delay the creditors of the mortgagor.

L. C. KARRICK.
C. L. HANNAMAN.

Subscribed and sworn to before me February 14th, 1887.

E. T. SPRAGUE,
Clerk Supreme Court of Utah Territory.

Endorsed: Chattel mortgage, Charles L. Hannaman to L. C. Karrick, dated February 14th, 1887. Recorded at the request of mortgagee February 23rd, 1887, at 5 min. past 3 o'clock p. m., Book "A" of Chattel Mortgages, 6612. George M. Cannon, recorder, Salt Lake county, Utah. Fees paid.

168 EXHIBIT "A 1."

L. C. Karrick stock account, Feb. 1, 1886, investment.		$5,000 00
C. L. Hanneman stock account, Feb. 1, 1886, investment		5,000 00
L. C. Karrick, loan account, Feb. 1, 1886, loan to Hanneman & Co.		15,000 00
C. L. Hanneman, personal account, Jan. 31, 1890, credit balance		298 89
L. C. Karrick, personal account, Jan. 14, 1890, debit balance	$4,714 14	
Sale of business and withdrawn from business during Jan., 1890	37,110 89	
	$41,825 03	

Hanneman & Co., Trial Balance, Jan. 31, 1890.

L. C. Karrick, stock account		$5,000 00
C. L. Hanneman, stock account		5,000 00
C. L. Hanneman, personal account		208 89
L. C. Karrick, loan to business		15,000 00
McCornick & Co., overdraft		2,327 78
Troy laundry		6 00
L. C. Karrick, personal account	$4,714 14	
L. C. Karrick, sale of business and withdrawn from business during Jan., 1890.	37,110 89	
Cash	26 47	
Store ledger account	629 08	
Laundry	2,608 53	
George B. Cluett & Bro	2 90	
Thomas McKelvey	1,303 47	
George O. Chaney	5 37	
Undivided profits		22,858 18
	$50,400 85	$50,400 85

Resources.

L. C. Karrick, personal account	$4,714 14	
L. C. Karrick, sale of business and withdrawn	37,110 80	
Cash	26 47	
Laundry ledger account	2,608 53	
Store ledger account	4,629 08	
George B. Cluett & Bro., account	2 90	
Thomas McKelvey	1,303 47	
George O. Chaney	5 37	

169 *Liabilities.*

L. C. Karrick, loan		$15,000 00
C. L. Hanneman, personal account		208 89
McCornick & Co., overdraft		2,327 78
Troy Laundry account		6 00
C. L. Hanneman, stock account		5,000 00
L. C. Karrick, stock account		5,000 00
Undivided profits		22,858 18
	$50,400 85	$50,400 85

Present Showing.

L. C. Karrick, personal account		$4,714 14
Sale and withdrawn		37,110 89
Total		$41,825 03
Less loan to Hanneman & Co		5,000 00
Balance due Hanneman & Co		$26,825 03

Cash		26 47
George B. Cluett & Bro.		2 90
Thomas McKelvey		1,303 47
George O. Chaney		5 37
Laundry ledger account		2,608 53
Store ledger account		4,629 08

Liabilities.

L. C. Karrick, stock account		$16,429 09
C. L. Hanneman, stock account		16,429 09
McCornick & Co., overdraft		2,327 78
C. L. Hanneman, personal account		208 89
Troy laundry, Chicago		6 00
	$35,400 85	$35,400 85

Division of Firm Property.

170	L. C. Karrick, having sold and disposed of the firm business, is charged as above with	$26,825 03
	And cash and accounts as above	8,575 82
		$35,400 85
	Less McCornick & Co. overdraft paid by L. C. Karrick, $2,327.78, and Troy laundry, $6 account	2,333 78
	Property of Hanneman & Co. in possession of L. C. Karrick	$33,067 07
	From which deduct L. C. Karrick's interest therein as shown by his stock account	16,429 09
	Due C. L. Hanneman	$16,637 98

EXHIBIT "A 6."

1886. C. L. Hanneman.

	Dr.	Cr.	Bal.
Feb. 1, sundries	$3,848 62	$8,299 10	$4,450 48
April 30, sunds. dur. mo	48 50	145 65	4,547 63
May 31, " "	144 54	107 50	4,510 59
June 30, " "	152 25	22 45	4,380 79
July 31, " "	175 15	50 85	4,256 49
Aug. 30, " "	111 75	22 70	4,167 44
Sep. 30, " "	284 60	4 15	3,823 24
Nov. 30, " "	153 30	14 35	3,684 29
Dec. 31, " "	283 81	109 21	3,509 69

1887.			
Jan. 31, sunds. dur. mo.....	304 45	....	32,052 49
Feb. 28, " "	409 25	277 21	0,073 20
Mar. 31, " "	65 50	33 55	3,041 25
April 30, " "	175 00	322 55	3,188 80
May 31, " "	31 10	128 00	3,285 70
June 30, " "	47 00	637 10	3,875 80
171			
July 31, sunds. dur. mo.....	92 85	125 00	3,907 95
Aug. 31, " "	147 05	645 00	4,405 90
Sep. 30, " "	49 50	637 70	4,994 10
Oct. 31, " "	433 12	125 00	4,685 98
Nov. 30, " "	194 99	165 00	4,655 99
Dec. 31, " "	309 25	979 60	5,326 34

Average monthly balance for twenty-three months, $4,224.48. Average for the twenty-two months beginning March 1st, 1886, is $4,039.27.

EXHIBIT "A 7."

1886, net profit.....	.....	$7,848 26
1887, loss.....	$3,413 35	
1888, net profit.....	.....	3,657 13
1889, net profit..... ...	.....	17,690 51
1889, loss on fixtures.....	2,824 47	
Total loss...	$6,237 82	
Total profit		$29,195 90
		6,237 82
Net profit.....		$22,958 08

Distribution in Accordance with Terms of Agreement.

L. C. Karrick, one-half profit, 1886..... ...	$3,924 13
L. C. Karrick, one-half profit, 1888.....	1,828 57
L. C. Karrick, one-half profit, 1889.....	8,845 25
	$14,597 95
Less one-half loss for 1887 and 1889.....	3,118 91
	$11,479 04

172	One-half profit of 1886 to remain in business	$3,924 13
	One-half profit of 1888 to remain in business.	1,828 57
	One-half profit of 1889 to remain in business.	8,845 25
		$14,597 95
	Less one-half loss, 1887 and 1889	3,118 91
	Am't profit to be divided equally...	$11,479 04

Recapitulation.

L. C. Karrick, one-half profit		$11,479 04
L. C. Karrick, one-half profit		5,739 52
		$17,218 56
C. Hanneman, one-half profit	$5,739 52	
C. L. Hanneman, investment	5,250 00	
	$10,989 52	
Less am't loaned by Karrick	5,000 00	
	$5,947 92	

173 EXHIBIT "A 5."

Statement of Hannaman shows petty acs. taken as being good.

Merchandise		$4,629 08
Laundry		2,608 53
		$7,237 61

Cash book shows payments have been made as follows:

Ac. merchandise	$2,632 75	
Ac. laundry	2,571 73	
		5,204 48
Amount uncollected		2,033 13

This amount is undoubtedly a loss, and should be deducted ½ from each partner's share of the profits.

L. C. Karrick	$17,218 56
Less one-half loss as above	1,016 56
	$16,202 00
C. L. Hannaman	$5,947 92
Less one-half loss as above	1,016 56
	$4,931 36

174 EXHIBIT "I."

SALT LAKE CITY, UTAH, *Nov.* 6, 1883.

One year after date I promise to pay to the order of Miss Roberta Tousey two thousand dollars, at Chicago, Ill., with interest at the rate of 12% per annum, value received.

C. L. HANNAMAN.

(Across face is written with stamp "Paid.")

Endorsed on back: "Hugh R. Wilson. Oct. 21, '84, paid on ac. this note one thousand dollars; Aug. 5, '85, paid ac. two hundred dollars; Feb'y 13, '86, paid in full with interest."

175 *Losses and Gains for* 1886.

Fixtures.

Jan. 1, 1887, loss and gain		$2,000 00

Merchandise.

Feb. 1, 1886, inventory of stock	$17,250 00	
Purchase for 1886	19,433 23	
Jan. 1, 1887, loss and gain	9,279 85	
	45,963 08	

Laundry.

Purchases for 1886	15,148 15	
Jan. 1, 1887, loss and gain	2,377 18	
	17,525 33	

Dye works.

Purchase for 1886	2,164 67	
Jan. 1, 1887, loss and gain	16 38	
	2,181 05	

Expense.

Sundry expenses for 1886		4,232 78
		4,232 78

Interest and discount.

On loans and accounts, 1886		1,913 90
		1,913 90

Freight and express.

Paid for 1886		696 38

Advertising.

Paid for 1886		281 55

C. L. Hanneman & Co.

Fixtures. Cr.

Jan. 1, 1886, inventory, invested as bonus		$2,000 00

Merchandise.

Jan. 1, 1887, inventory of stock	$20,539 72	
Sale for 1886	22,224 71	
176 Petty ledger, open accounts, Jan. 1, 1888	2,879 60	
Petty ledger, accounts collected by Gordon	319 05	
	45,963 08	

Laundry.

Sales for 1886	15,136 67	
Petty ledger, open accounts, Jan. 1, 1888	2,388 66	
	17,525 33	

Dye works.

Sales for 1886	1,764 95	
Petty ledger, open accounts, Jan. 1, 1888	416 10	
	2,181 05	

Expense.

Rents, etc., received for 1886	402 85	
Jan. 1, 1887, loss and gain	3,829 93	
	4,232 78	

Interest and discount.

Discounts on accounts	896 61	
Jan. 1, 1887, loss and gain	1,017 29	
	1,913 90	

Freight and express.

Jan. 1, 1887, loss and gain	696 38

Advertising.

Jan. 1, 1887, loss and gain	281 55

177 *Summary for* 1886.

	Losses.	Gains.
Fixtures		$2,000 00
Merchandise		9,279 85
Laundry		2,377 18
Dye works		16 38
Expense	$3,829 93	
Interest and discount	1,017 29	
Freight and express	696 38	
Advertising	281 55	
Fixtures	2,000 00	
Net earnings for 1886	5,848 26	
	$13,673 41	$13,673 41

Balance-sheet for 1886.

L. F., January 1, 1887:

1. Merchandise	$23,419 32	
26. Laundry	2,388 66	
34. Dye works	416 10	
75. C. L. Hanneman		3,509 69
80. L. C. Karrick		24,490 78
82. J. F. Long		130 70

84. O. J. Bourne	81 95	
290. Fixtures	2,204 50	
295. Laundry plant	11,145 13	
300. Dye-works plant	2,243 02	
314. P. E. Gordon	1,072 68	
Cash—Ov'd'ft less bal. in drawer		4,568 68
Open acc'ts payable		2,423 26
Profit and loss not adjusted		7,848 26
	$42,971 37	$42,971 37

178 *Losses and Gains for* 1887.

Merchandise.

Jan. 1, 1887, inventory of stock	$20,539 72
Purchases for 1887	18,559 95
Petty-ledg-r acc'ts—bal. Jan. 1, 1887	2,879 60
Jan. 1, 1888, loss and gain	6,491 88
	48,471 50

Laundry.

Petty-ledger acc'ts Jan. 1, 1887	2,388 66
Purchases for 1887	20,190 93
Jan. 1, 1888, loss and gain	2,367 65
	24,946 64

Dye works.

Petty-ledger acc'ts Jan. 1, 1887	416 10
Purchases for 1887	4,554 21
	$4,970 31

Expense.

Sundry expenses for 1887	9,468 19

Interest and discount.

On loans and accounts for 1887	2,788 00

Freight and express.

Paid during 1886	769 42

Advertising.

Paid during 1889	507 60

179 C. L. Hanneman & Co.

Merchandise.		Cr.
Jan. 1, 1888, inventory of stock		$20,150 15
Sales for 1887		25,715 40
Petty-ledger acc'ts, Jan., 1888	$2,733 35	
Less am'ts cha'g'd profit and loss	127 75	
		2,605 60
		48,471 15

Laundry.

Sales for 1887		22,614 81
Petty-ledger acc'ts, Jan. 1, 1888	2,341 68	
Less am'ts ch'g'd profit and loss	9 85	
		2,331 83
		24,946 64

Dye works.

Sales for 1887		3,750 05
Petty-ledger acc'ts, Jan. 1, 1888	388 10	
Less am't ch'g'd to profit and loss	47 20	
		340 90
Jan. 1, 1888, loss and gain		879 36
		4,970 31

Expense.

Rent, etc., received for 1887	1,701 70	
Jan. 1, 1888, loss and gain	7,766 49	
	9,468 19	

Interest and discount.

Discount on accounts, 1887	448 59	
Jan. 1, 1888, loss and gain	2,339 41	
	2,788 00	

180 Freight and express. CR.

Jan. 1, 1888, loss and gain	769 42

Advertising.

Jan. 1, 1888, loss and gain	517 60

Summary for 1887.

	Loss.	Gain.
Merchandise		6,491 88
Laundry		2,367 05
Dye works	879 36	
Expense	7,766 49	
Interest and discount	2,339 41	
Freight and express	769 42	
Advertising	517 60	
Net loss for 1887		3,413 35
	12,272 28	12,272 28

Balance-sheet for 1887.

Jan. 1, 1888:

6	Merchandise	22,755 75	
31	Laundry	2,331 83	
40	Dye works	340 90	
79	C. L. Hanneman		5,326 34
85	O. J. Bourne	44 38	
90	W. R. Pearce		15 55
92	L. C. Karrick		21,160 38
97	Y. O. Chaucy	48 35	
100	Street & Co.		121 97
101	Earl & Wilson		109 50
106	Wilson Bros		2,109 30
110	Woodbridge & Co.	15 00	
112	Cluett, Coon & Co.		85 51
113	Miller & Evans		100 50
155	McCornick Co., (bank account)		6,972 57
181			
290	Fixtures	2,548 28	
295	Laundry plant	11,145 13	
300	Dye-works plant	2,283 03	
311	Culmer & Bro.		140 13
312	A. M. Dolph & Co.		7 50
314	Petty ledger	24 10	
316	Coon & Co.		372 95
323	Troy Laundry Machine Co		18 85
	Sprague, Warner & Co.		36 75
325	Abell, Bach & Fitzgerald		369 79
328	J. S. Long & Co.		341 23
334	P. C. Gordon	569 43	
336	W. L. Parrott & Co.		15 00
338	Diamond Shirt Co.		33 75
339	Studebaker Bros.		75 00
	Cash balance		258 70
	Earnings for 1886, not adjusted		7,848 26
	Losses for 1887, not adjusted	3,413 35	
		45,519 53	45,519 53

Losses and Gains for 1888.

Merchandise.

Inventory of stock Jan. 1, 1889	820,150 15	
Purchases for 1888	19,667 71	
Petty ledger (balance Jan. 1, 1888)	2,605 60	
Jan. 1, 1889, loss and gain	4,940 72	
	47,364 18	

Laundry.

Petty ledger (balance Jan. 1, 1888)	2,331 83	
Purchases for 1888	24,381 94	
Jan. 1, 1889, loss and gain	5,798 89	
	32,512 66	

182

Dye works.

Petty ledger—bal. Jan. 1, 1888	340 90	
Purchases for 1888	1,303 82	
Jan. 1, 1889, loss and gain	916 58	
	2,561 30	

Expense.

Sundry expenses for 1888	5,552 43	5,552 43
		5,552 43

Interest and discount.

On loans and accounts during 1888	2,493 21
	2,493 22

Freight and expressage.

Paid during 1888	816 11

Advertising.

Paid during 1888	530 50

Store fixtures.

14 per cent. of value for wear and tear	386 64

Laundry plant.

1 per cent. of value for wear and tear	122 21

O. J. Bourne.

Balance of his account	40 08

C. L. Hanneman & Co.

Merchandise. CR.

Jan. 1, 1889, inventory of stock	$13,758 68
Sales for 1888	31,134 45
Petty ledg-r, open acc'ts Jan. 1, '89	2,471 05
	47,364 18

183

Laundry.

Sales for 1888	29,976 04
Petty ledger, open accounts, Jan. 1, 1888	2,236 62
Inventory, Jan. 1, 1889, material on hand	300 00
	32,512 66

Dye works.

Sales for 1888	2,561 30	
	2,561 30	

Expense.

Rents, etc., received for 1888	725 63	
Jan. 1, 1889, loss and gain	4,826 80	
	5,552 43	

Interest and discounts.

Discounts on accounts 1888	1,216 49	
Jan. 1, 1889, loss and gain	1,276 72	
	2,493 21	

Freight and express.

Jan. 1. 1889, loss and gain	816 11

Advertising.

January 1, 1889, loss and gain	530 50

Store fixtures.

Jan. 1, 1889, loss and gain	386 64

Laundry plant.

Jan. 1, 1889, loss and gain	122 21

O. J. Bourne.

Jan. 1, 1889, loss and gain	40 08

184 *Summary for* 1888.

	Loss.	Gain.
Merchandise		$4,940 72
Laundry		5,798 89
Dye works		916 58
Expense	4,826 80	
Interest and discount	1,276 72	
Freight and express	816 11	
Advertising	530 50	
Store fixtures	386 64	
Laundry plant	122 21	
O. J. Bourne	40 08	
Net earnings for 1888	3,657 13	
	11,656 19	11,656 19

Balance-sheet for 1888.

Jan. 1. 1889:

10	Merchandise	16,229 73		
79	C. L. Hanneman	.....	5,208 89	
100	R. R. Street & Co	.....	13 20	
132	Thos. McKelvie	1,057 11		
146	Laundry	2,536 62		
163	McCornick & Co., (bank account)	.....	310 68	
243	L. C. Karrick	.....	22,756 47	
260	J. H. Wheedon	.....	5 00	
274	E. Morris & Co	.....	63 65	
276	G. O. Chaney	112 90		
290	Fixtures	2,386 64		
295	Laundry plant	12,122 22		
300	Dye-works plant	2,283 03		
314	Petty ledger	.....	304 25	
316	Coon & Co	.....	10 35	
328	J. S. Long & Co	.....	117 00	
334	P. C. Gordon	300 00		
341	J. P. Mast	.....	2 00	
185				
	Cash balance	124 65		
304	Troy Laundry Machine Co	.....	175 00	
338	Diamond Shirt Co	.....	6 92	
357	Roberts Bros	.....	1 00	
359	Merchants' Printing Co	.....	51 20	
361	Steifel Bros	.....	35 25	
	Earnings for 1886, not adjusted	.....	7,848 26	
	Losses for 1887, not adjusted	3,413 35		
	Earnings for 1888, not adjusted	.....	3,657 13	
		40,566 25	40,566 25	

Losses and Gains for 1889 *to January* 31, 1890.

Merchandise.

Inventory of stock Jan. 1, '89	$13,758 68	
Purchases for 1889	32,715 24	
Petty ledger (bal. Jan 1, '89)	2,471 05	
Loss and gain	15,307 94	
	64,252 91	

Laundry.

Petty ledger (bal. Jan. 1, '89)	2,236 62	
Purchases for 1889	56,624 53	
Inventory of stock Jan. 1, '89	300 00	
Loss and gain	9,507 09	
	38,668 24	

Dye works.

Petty ledger, bal. Jan. 1, 89, no bal.		
Purchases for 1889, rent, etc.	105 87	
Loss and gain	782 96	
	888 83	
186 Expense.		
Sundry expense for 1889		6,509 42
Interest and discounts.		
On loans and accounts during '89		1,928 62
Freight and expressage.		
Paid during 1889		1,188 60
Advertising.		
Paid during 1889		593 50
Store fixtures.		
Bal. still remaining open on books		100 00
Abel, Bach & Fitzgerald.		
Bal. remain'g open on books, void.		
Loss and gain		10

C. L. Hanneman & Co.

Merchandise.		Cr.
Jan. 1, 1890, inventory of stock:		
Sale to B. M. Co.	$16,040 65	
Sales for 1889	43,583 18	
Petty ledger open acc'ts, Jan. '90	4,629 08	
	64,252 91	
Laundry.		
Sale to B. M. Co	427 20	
Sales for 1889	35,632 51	
Petty ledg-r, open acc'ts Jan. 1, '90	2,608 53	
(Inventory Jan. 1, 1890, included as above), 427.20.		
	38,668 24	
187 Dye works.		
Receipts during 1889	888 83	
Expense.		
Rent, etc., received for 1889	641 75	
Loss and gain	5,867 67	
	6,509 42	

Interest and discount.

Discount on accounts	1,670 91	
Loss and gain	257 71	
	1,928 62	

Freight and express.

Loss and gain	1,188 60	

Advertising.

Loss and gain	593 50	

Store fixtures.

Loss and gain		100 00

Abel, Bach & Fitzgerald.

Balance remaining open on books		10

Summary for 1889.

To Jan. 30, 1890:

		Losses.	Gains.
	Merchandise		$15,307 94
	Laundry		9,507 09
	Dye works		782 96
	Expense	$5,867 67	
	Interest and discount	257 71	
	Freight and express	1,188 60	
	Advertising	593 50	
	Store fixtures	100 00	
188	Abel, Bach & Fitzgerald		10
	Net earnings for 1889	17,590 61	
		25,598 09	25,598 09

Balance-sheet for 1889 *to January* 31, 1890, *Inclusive.*

		Dr.	Cr.
24.	L. C. Karrick	$21,825 03	
76.	C. L. Hanneman		5,208 89
112.	Geo. B. Cluett & Co.	2 90	
134.	Thos. McKelvie	1,303 47	
170.	McCornick & Co., bank overdraft		2,327 78
185.	Geo. Chaney	5 37	
304.	Troy Laundry Mach. Co.		6 00
	Cash balance	26 47	
	Earnings for 1886, not adjusted	26 47	7,848 26
	Losses for 1887 " "	3,413 35	7,848 26
	Earnings for 1888 " "	3,413 85	3,657 13
	" " 1889		17,590 61

Petty ledger, balance laundry	2,608 53	17,590 61
" " bal. merchandise	4,629 08	
Losses on sale of business to the B. M. Co. (not adjusted)	2,536 49	
Loss on Jacontot account	287 98	
	36,638 67	36,638 67

Recapitulation of Losses and Gains.

	Losses.	Gains.
For the year 1886	.....	7,848 26
" " " 1887	3,413 35	
" " " 1888	.....	3,657 13
" " " 1889	.....	17,590 61
Net gain for the 4 years	25,682 65	
	29,096 00	29,096 00

189 *Supplementary Recapitulation Embracing Net Gain for 4 Years and also Losses on Sale of Fixtures, Laundry Plant, Dye-works Plant, and Eugene Jacontot's Ledger Account.*

Net gain brought down	.....	25,682 65
Loss on E. Jacontot	287 98	
" " fixtures	912 64	
" " laundry plant	540 82	
" " dye-works plant	1,083 03	
Total profits not adjusted	22,858 18	
	26,582 65	26,582 65

Comparative Statement of Percentage of Profit on Gross Sales for the Four Years.

Merchandise.

Inventory, Feb. 1, 1886	$17,250 00	
Purchases during 1886	19,433 23	36,683 23
Less inventory, Jan. 1, 1887	.....	20,539 72
Net cost of goods sold during 1886	.....	16,143 51
Gross gain on sales, 1886, $9,279.85. Percentage, 57.48.		
Inventory, Jan. 1, 1887	20,539 72	
Petty-ledger balance, Jan. 1, 1887	2,879 60	
Purchases during 1888	18,559 95	41,979 27
Less inventory, Jan. 1, 1888	.....	20,150 15
Net cost of goods sold during 1887	.....	21,829 12
Gross gain on sales, 1887, $6,493.88. Percentage, 29.75.		
Inventory, Jan. 1, 1888	20,150 15	

190	Petty-ledger balance, Jan. 1, 1888...	2,605 60	
	Purchase during 1881..... ...	19,667 71	42,423 46
	Loss inventory, Jan. 1, 1889.....	.....	13,758 68
	Net cost of goods sold during 1888.....	.. ..	28,664 78
	Gross gain on sale 1888, $4,940.72. Percentage, 17.24.		
	(Memorandum.) Inventory for sale to B. M. Co., Jan. 1, 1890.....	16,040 65	
	Petty-ledger balance Jan. 1, 1890.....	4,629 08	
	Sales for 1889.....	43,583 18	48,212 26
	Less gross gain for 1889.....	.....	15,307 94
	Net cost of goods sold during 1889.....	.....	32,904 32
	Gross gain on sale 1889, $15,307.94. Percentage, 46.52.		
	Inventory, Jan. 1, 1889..... ..	13,758 68	
	Petty-ledger balance Jan. 1, 1889.....	2,471 05	
	Purchases during 1889.....	32,715 24	48,944 97
	Less inventory, Jan. 1, 1890.....	....	16,040 65
	Net cost of goods sold during 1889.....	.....	32,904 32
	Gross gain on sales, $15,307.94. Percentage, 46.52.		

Comparative Statement (Continued).

Laundry.

	Purchases during.....	15,148 15	
	Gross gain on sales during 1886, $2,377.18. Percentage, 15.69.		
	Purchases during 1887.....	20,190 93	
	Petty-ledger balances Jan. 1, 1888.....	2,388 66	22,579 59
	Gross gain on sales 1887, $2,267.05. Percentage, 10.40.		
	Purchases during 1888.....	24,381 94	
	Petty-ledger balances Jan. 1, 1888...	2,331 83	26,713 77
191	Gross gains on sales 1888, $5,798.89; percentage 21.70.		
	Inventory July 1, 1889.....	300 00	
	Purchases during 1889.....	26,624 53	
	Petty-ledger balances Jan. 1, '89	2,236 62	29,161 15
	Gross gain on sales 1889, $9,507.09; percentage, 32.60.		

Dye works.

	Purchases during 1886.....	2,164 67	
	Gross gain on sales 1886, $16.38; percentage, .071.		
	Purchases during 1887.....	4,554 21	
	Petty ledger, balance Jan. 1, 1887.....	416 10	4,970 31
	Gross loss on sales, 1887, $879.36; percentage, 17.69.		
	Purchases during 1888.....	1,303 82	

Petty-ledger balances, Jan. 1, 1888.....	340 90	1,644 72
Gross gain on sales, 1888, $916.58; percentage, 55.75.		
Rents, etc., for 1889.....	105 87	
Receipts for rents, etc., 1889.....	.....	888 83
Gross gain, 1889, $782.96; percentage, 739.55.		

Resources and Liabilities January 31, 1890, *Hanneman & Co.*

Resources.

L. C. Karrick.....	10,395 94	
Geo. B. Cluett & Co.....	2 90	
Thos. McKelvie.....	1,303 47	
Geo. O. Chaney.....	5 37	
Cash balance.....	26 47	
Petty-ledger balances, laundry	2,608 53	
" " bal., merchandise.....	4,629 08	18,971 76
C. L. Hanneman.....	16,637 98	
McCornick & Co., overdraft.....	2,327 78	
Troy Laundry Machine Co.....	6 00	18,971 76

NOTE.—Above computed on the basis of an equal adjustment of the net gain for the four years after deducting losses on sale to the partners' accounts.

192	Hannaman stock ac.....	$16,637 98
	Deduct ½ % 2,005.13 loss on petty-ledger ac.....	1,002 56
		15,635 42
	Less due from Hannaman to Karrick per partnership agreement.....	5,000 00
	Net am't due C. L. Hannaman from L. C. Karrick	10,635 42

193 TERRITORY OF UTAH, } *ss:*
County of Salt Lake, }

We, the undersigned attorneys, certify that the above and foregoing statement on motion for a new trial in the action of C. L. Hannaman, plaintiff, against Louis C. Karrick, defendant, pend- in the third judicial district court of Utah Territory, is correct, agreed upon, and settled, and shall be the statement on appeal from the judgment in said action, if an appeal be taken therein, and may be used in all proceedings in this action.

POWERS & HILES,
W. C. HALL,
Attorneys for Plaintiff.

——— ———,
Attorneys for Defendant.

I allow the foregoing statement the 4th day of January, 1892.
SAMUEL A. MERRITT, *Referee.*

Endorsed: #8430. Title court and cause. Statement on motion for a new trial. Service on us of the within statement is hereby admitted this 16th day of December, A. D. 1891. J. L. Rawlins, W. Van Cott, att'ys for plaintiff. Filed December 16th, 1891. Henry G. McMillan, clerk, by Geo. D. Loomis, deputy.

194 In the District Court for the Third Judicial District of Utah Territory, Salt Lake County.

CHARLES L. HANNAMAN, Plaintiff,
vs.
LOUIS C. KARRICK *et al.*, Defendants.

The motion of defendant Karrick for a new trial coming on to be heard, the same is argued by O. W. Powers for the said defendant and by W. Van Cott and J. L. Rawlins for the plaintiff, and being submitted and considered by the court and it appearing that the judgment herein is sustained by the law and the evidence, and that no reason appears for granting a new trial herein, it is ordered and adjudged that said motion for a new trial be, and the same is hereby, overruled, and defendant Karrick excepts.
Dated April 21st, 1892.

In the District Court for the Third Judicial District of Utah Territory.

CHARLES L. HANNAMAN, Plaintiff,
vs.
LEWIS C. KARRICK *et al.*, Defendants.

On motion of Messrs. Powers and Hiles, attorneys for the defendant Karrick, it is ordered that a stay of proceedings for ten days' time be, and the same is hereby, allowed upon the judgment herein.
Dated April 23rd, 1892.

195 TERRITORY OF UTAH,
County of Salt Lake, } ss:

In the Third Judicial District Court.

CHARLES L. HANNAMAN, Plaintiff,
vs.
LEWIS C. KARRICK, Defendant.

Please take notice that the said defendant in the above-entitled cause hereby appeals to the supreme court of the Territory of Utah from the judgment therein made and entered in the said third judicial district court on the 7th day of October, A. D. 1891, in favor of said plaintiff and against said defendant in said action and from the whole thereof, and also from the order of said district court heretofore and on the 21st day of April, A. D. 1892, made and en-

tered in said action overruling and refusing defendant's motion for a new trial herein.

POWERS & HILES,
Attorneys for Defendant.

Salt Lake City, Utah, April 30th, 1892.

To the clerk of said district court and to J. L. Rawlins and W. Van Cott, attorneys for plaintiff.

Endorsed: #8430. Title court and cause. Notice of appeal. Service on us of the within notice of appeal is hereby admitted this 30th day of November, A. D. 1892. J. L. Rawlins. W. Van Cott, att'ys for pl'ff. Filed April 30, 1892. Henry G. McMillan, clerk, by Geo. D. Loomis, deputy. Powers & Hiles, att'ys for defendant.

196 TERRITORY OF UTAH, } ss:
County of Salt Lake, }

I, Henry G. McMillan, clerk of the district court for the third judicial district of Utah Territory, do hereby certify that the foregoing is a full, true, and correct copy of the original complaint, answer of company, answer and cross-complaint of Karrick, demurrer to cross-complaint, order withdrawing demurrer, answer to cross-complaint, order allowing plaintiff to take copies of partnership books, order appointing referee, findings of fact and conclusions of law, judgment of referee, decision of court, notice of decision, notice of motion for new trial, stipulations extending time to file statement on motion for new trial, order overruling motion for new trial, order allowing stay, notice of appeal, and endorsements thereon in the action therein entitled on file in my office, and I do hereby further certify that an undertaking on appeal has been filed by said appellant, and that the same is in due form.

Witness my hand and the seal of said court this third day of June, A. D. 1892.

[SEAL.] HENRY G. McMILLAN, *Clerk.*

197 & 198 In the Supreme Court of Utah Territory, Regular January Term, 1893.

TUESDAY, *March 23rd.*

CHARLES L. HANNAMAN }
vs.
LEWIS C. KARRICK *et al.*, Appellants. }

This cause coming on regularly for hearing was argued by J. G. Sutherland, Esq., and Andrew Howat, Esq., in behalf of appellant, by Waldemar Van Cott and J. L. Rawlins, Esq., in reply, and was submitted and taken under advisement.

Title Court. Regular June Term, 1893. Title Cause.

WEDNESDAY, *August 30th.*

This cause having been heretofore argued and submitted, and the court being sufficiently advised thereon, it is now here considered, ordered and adjudged that the judgment of the district court therein be, and the same is hereby, modified by deducting therefrom the sum of three thousand dollars, and the judgment so modified is affirmed with costs.

199 In the Supreme Court of Utah Territory.

CHARLES L. HANNAMAN, Respondent,
vs.
L. C. KARRICK, Appellant.

BARTCH, *J.:*

This is an action for the dissolution of a partnership brought by one partner against his copartner. The case was referred to a referee, with power to try the same and report a decree. The referee tried the case and made his report, which was confirmed by the court. The defendant thereupon moved for a new trial, which motion having been overruled, he prosecuted his appeal in this court.

It appears from the record that the plaintiff and defendant entered into an agreement of copartnership on the 3rd day of February, 1886, for a term of five years from that date, to carry on a mercantile and laundry business. The plaintiff furnished $5,000.00 of the capital and the defendant $20,000.00, on $15,000.00 of which he was to receive interest until the principal was paid back to him. The defendant also loaned the plaintiff $5,000.00. They were to share the profits and loss equally, and the plaintiff was to manage the business, but the defendant was not required to devote his time to it. Under this agreement they carried on the business until about the 1st of January, 1888, when the defendant, having
200 become dissatisfied with the management, forcibly ejected the plaintiff and took charge of the business himself. He continued so in charge until about the 1st of January, 1890, when he sold the stock in trade and business without the assent of the plaintiff and without recognizing any right in him or accounting to him for any share of the profits or of the proceeds of sale. The defendant claims that the plaintiff had no interest in the concern and that the firm of Hannaman & Co. was dissolved about the first day of February, 1888, by virtue of an oral agreement between the parties to the effect that the plaintiff was to have sixty days in which to raise the money to purchase the interest of the defendant, or, failing so to do, the defendant was to have the business by assuming the payment of the indebtedness of the firm and cancelling the $5,000 note which he held against the plaintiff. That such an agreement was made is denied by the plaintiff, who claims that he was forcibly ejected by the defendant and that there was no dissolution of the firm.

The evidence relating to this oral agreement was conflicting, and in relation thereto the referee found, as a matter of fact, as follows: "That about February 1, 1888, defendant Karrick took forcible, wrongful, and exclusive possession of all of said business, stock, partnership, books and accounts, and the premises on which the same were situate, and on said last-named date the defendant Karrick forcibly and wrongfully ejected the plaintiff therefrom and ever afterward prevented the plaintiff from participating and assisting in said business and performing his part of said agreement
201 and in participating in any way in the profits of said business." Counsel for defendant insist that the evidence is insufficient to justify this finding of fact, and that the circumstances relating to the transaction ought to be taken into consideration in passing upon the question of the existence of the agreement under which the defendant claims to have taken possession.

It cannot be doubted that where, in a case like this, the parties to the action are the principal witnesses, the circumstances tending to corroborate or contradict the testimony of either party are frequently of controlling weight and should be considered in determining the question. It is noticeable in examining this case that counsel on both sides have noted in their briefs, with considerable care and apparent candor, the circumstances surrounding the making of the agreement, but, nevertheless, they have failed to remove the conflict in the testimony as it appears of record.

This being the case, it is but fair to presume that the referee, in attempting to reconcile the conflict in the evidence, took into consideration the demeanor of the witnesses while testifying, their manner of testifying, and the apparent consistency, fairness, and congruity of their testimony. The opportunity thus to observe the witnesses afforded him great aid in arriving at the truth. This court has no such opportunity, and therefore the conclusions as to the facts reached by the referee and confirmed by the court below will not be disturbed unless it is clearly manifest that there was error or oversight. Nothing of this kind is apparent from
202 the record. There are circumstances which strongly tend to corroborate the testimony of the plaintiff and support the finding in question. The defendant himself testified that under the agreement he was to assume and pay the debts of the firm and cancel the $5,000.00 note. There is nothing to show that this note was cancelled. In fact, the contrary appears, for he avers in his answer that the plaintiff owes him $7,000.00, and the testimony shows that this includes the $5,000 mentioned in the note. It is also shown that after the time alleged for the making of the agreement the plaintiff deposited $979.60 in the business, and the written notice from defendant to plaintiff, stating that the firm of Hannaman & Co. was dissolved, was dated May 16th, 1888, which was long after the plaintiff had been ejected. It also appears that after the plaintiff was ejected from the store the defendant continued to credit himself with interest on the $15,000.00 loaned to the firm under the partnership agreement.

The plaintiff, after he had been forcibly removed, notified the

defendant that he was desirous of performing his part of the partnership agreement. All these and other acts and circumstances shown by the record seem to be inconsistent with the theory that the parties were acting under and controlled by the agreement in question, and the finding of fact complained of seems to be a fair and reasonable deduction from the proofs, for if, as must be determined, there was no such an agreement, then the act of the defendant in forcibly ejecting the plaintiff and assuming the entire control of the business was wrongful and without authority, the plaintiff having had the right to manage the business under the partnership agreement.

203 The only remaining question material to the decision of this case is as to whether the action of the defendant in forcibly and wrongfully ejecting the plaintiff and assuming control of the firm's business dissolved the partnership.

Can one partner take forcible possession of the property of a firm and thereby effect a dissolution of the partnership before the expiration of the time specified in the agreement?

There are authorities which affirm this proposition and hold that if the act of dissolution was wrongful the party affecting it is simply liable in damages to the party injured.

See Story on Part., sec. 273.

Skinner *v.* Dayton, 19 Johns., 513.

Solomon *v.* Kirkwood, 55 Mich., 256.

But, even under most of the authorities so holding, it would seem that the party effecting the dissolution within the stipulated time must act in good faith and without any sinister motive and for reasonable cause, or, in cases where the circumstances show the dissolution to be specially injurious to the other partners, equity will interfere.

Generally, in a case where there has been a dissolution of the partnership on account of disagreement between the partners, it has been at the instance of the partner who was not himself at fault.

Where the partnership is merely at will, the right of one partner to terminate it must be conceded; but where, by agreement, it is to continue for a time stipulated, the party seeking a dissolution before the expiration of the time ought in justice at least be re-

204 quired to act in good faith and at a reasonable time and in a reasonable manner. In the case of a partnership for a stipulated time of duration, where the business has been established, is becoming profitable, and has good future prospects, to allow one of the partners *sua sponte* to expel the other and dissolve the partnership, with a view to appropriate the business to himself, would be to adopt a doctrine at once inequitable and unsupported by either reason or justice. There seems to be no good reason why a person should be allowed to commit a breach of his contract in such case, while in all other cases of flagrant violation, not within the partnership, he would be compelled to specifically perform, if it was within his power to do so.

Why should a partner be thus allowed to ruin the business of the firm from mere caprice or of his own volition without cause and in violation of his agreement and sacrifice the entire object of the partnership? That such a violation may entitle the injured partner to damages is no answer, for damages in many cases must necessarily prove to be utterly inadequate to compensate for the destruction of a profitable and growing business, and, besides, this mode of redress is usually slow and unsatisfactory and is not a remedy that will or can do complete justice between the parties.

Where there is such a breach between the partners as to render continuance impossible or when dissension has dispelled the hopes, prospects, and advantages which induced its formation, or if, for any just cause, the partnership ought to be dissolved before the expiration of the term, then a court of equity is competent to grant relief.

205 But it would scarcely seem to come within the principles of justice to permit one partner to expel another from a profitable business for some real or fancied wrong or mismanagement and then continue the business himself and profit by his own wrong, responsible only in damages.

Mr. Justice Story, in his commentaries on the Law of Partnership, in sec. 275, speaking of the power of one partner to dissolve the partnership where the time of duration is stipulated, says: "In cases where the partnership is by the agreement to endure for a limited time, the question whether it may within the period be dissolved by the mere act or will of one of the partners, without the consent of all the others, does not seem to be absolutely and definitely settled in our jurisprudence, although it would not seem upon principle to admit of any real doubt or difficulty whenever a stipulation is positively made that the partnership shall endure for a fixed period or for a particular adventure or voyage it would seem to be at once inequitable and injurious to permit any partner at his mere pleasure to violate his engagement and thereby to jeopard, if not sacrifice, the whole objects of the partnership, for the success of the whole undertaking may depend upon the due accomplishment of the adventure or voyage or the entire time be required to put the partnership into beneficial operation."

In Gerard *v.* Gateau, 84 Ill., 121, Mr. Justice Scott, delivering the opinion of the court, said: "A party who is the author of the ill feeling between himself and partners ought not to be permitted to make the relation he has induced the ground of a dissolution

206 of the partnership. His conduct may have been taken with a view to that very result, and it would be inequitable to allow him advantage from his own wrongful acts. It would allow one partner, at his election, to put an end to his own deliberate contract when the other has been guilty of no wrongful act or omission of duty. The results flowing from a premature dissolution of a partnership might be most disastrous to a partner who had embarked his capital in the enterprise." So in Henn *v.* Walsh, 2 Edw. Ch'y, 129, the vice-chancellor said: "A partnership agreement, like any other, is binding upon the parties. They must ad-

here to its terms. Neither partner is at liberty to recede from it against the will of the other without a sufficient cause. Mere dissatisfaction by one partner will not justify him in filing a bill for a dissolution where, by the express agreement, it is to continue for a definite term, and the court will not interfere to dissolve the contract upon such ground."

The views thus expressed have the apparent support of most elementary writers and seem to be in conformity with the doctrine prevailing in England. The contrary doctrine, if not indefensible, is founded on reasons exceedingly artificial. It is based on the ground that one partner has the right to found his claim, real or otherwise, to immediate safety and indemnity on an obvious injury to the interests and rights of another, which is alike inequitable and unjust, and we think it is not supported by the weight of authority.

Story on Part., secs. 275, 276.
Story's Eq. Juris., sec. 673.
Linley on Part., 575, sec. 2.
Ferreow *v.* Buhlmeyer, 34 How. Pr., 33.
Pearpont *v.* Graham, 4 Wash. C. C., 232.
Peacock *v.* Peacock, 16 Ves., 49.
207 Cash *v.* Earnshaw, 66 Ill., 402.
Van Kuren *v.* Trenton L. & M. M. Co., 13 N. J. Eq., 302.

Where, as in the case under consideration, one partner has forcibly expelled the other and assumed control of and continued to carry on the business himself, the partner thus working the dissolution of the firm must account to the injured partner for the profits up to the time of a lawful dissolution or to the expiration of the term, and also for the property of the firm, or, in case of sale, for the proceeds; and, unless the partners have expressly stipulated therefor, he is not entitled to compensation for his services thus performed of his own volition, except in cases where complete justice between the parties requires such allowance.

1 Coll. on Part., sec. 324.
Story on Part., sec. 182, 329, 331.
3 Kent Com., 64.
Crawshay *v.* Collins, 15 Ves., 218.
Cole *v.* Moxley, 12 W. Va., 732.
Willett *v.* Blanford, 1 Hare, 253.
Hartman *v.* Woehr, 18 N. J. Eq., 383.
Hinlock *v.* Hamlin, 27 Am. Dec., 441.

The position assumed by counsel for defendant that whether or not there was such an agreement, as claimed by him, the defendant had the right to take possession under the mortgage, and that such taking of possession dissolved the partnership, is not tenable, as appears from the record.

He alleges in his answer that he, "in pursuance of said agreement with the plaintiff, took possession of the said business, stock, assets, &c.," but nowhere does he allege that he took possession

under the mortgage with the intention of dissolving the partnership, nor does it appear that this point was raised on the
208 trial, nor that the parties intended the security given for the loan to confer a right whereby he could defeat the objects of the partnership, nor that any sale was made under the mortgage.

It is not necessary to discuss the other points raised in the record, because we do not deem them material in the decision of this case. The defendant claimed the right to forcibly expel the plaintiff from the partnership and appropriate the business to his own use. It is clear that he could not in this manner dissolve the partnership, and he must be held to account to the plaintiff for his share of the profits and proceeds of the sale of the property.

But we think, under the circumstances of this case and from the fact that after the 1st day of January, 1887, each partner appears to have been allowed to draw out of the business $125 per month for personal expenses, that the defendant ought to have been allowed the sum of $3,000, personal expenses, for the 2 years during which he conducted the business of the firm, and that the judgment should be modified and affirmed in the sum of $9,040.53, with interest on said sum from the date of the judgment of the district court.

As thus modified, the judgment is affirmed.

I concur.
MINER, *J.*

Filed Aug. 30, 1893.

JOS. P. BACHE,
Clerk Supreme Court of Utah.

NOTE.—On the 28th day of October, 1893, the date of the judgment rendered on determination of the petition for rehearing, the clerk was ordered by the court to change and did change the above opinion so that the last six lines would read as follows, to wit:

"During which he conducted the business of the firm, the same to be deducted from the proceeds of the firm, and that the judgment should be modified and affirmed in the sum of $10,540.53, with interest on said sum from the date of the judgment of the district court. As thus modified, the judgment is affirmed.

I concur.
MINER, *J.*"

209 In the Supreme Court of Utah Territory.

CHARLES L. HANNAMAN, Plaintiff,
vs.
LEWIS C. KARRICK, Defendant.

To Honorable C. S. Zane, chief justice:

The defendant prays an appeal from the judgment in the above-entitled case, affirming in part the judgment rendered therein by the district court of the third judicial district, to the Supreme

Court of the United States, and for the approval of defendant's bond for supersedeas and for issue of a citation to the plaintiff.

J. G. SUTHERLAND,
Attorney for Defendant.

Oct. 19th, 1893.

Endorsed on back: #286. Supreme court, Utah Territory. Chas. L. Hannaman, resp'd't, *vs.* Lewis C. Karrick, app'l't. Prayer for allowance of appeal. Filed in the supreme court Oct. 23, 1893, at Salt Lake City, Utah. Jos. P. Bache, clerk.

210 By the Honorable Charles S. Zane, chief justice of Utah.

To Charles L. Hannaman and to J. L. Rawlins and Waldemar Van Cott, his attorneys, Greeting:

Whereas Lewis C. Karrick has lately appealed to the Supreme Court of the United States from a judgment and decree rendered in the supreme court of the Territory of Utah in favor of you, the said Charles L. Hannaman, against said Lewis C. Karrick, and has filed the security required by law, you are therefore hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, on the 1st day of December next, to do and receive what may pertain to justice to be done in the premises.

Given under my hand, at the city of Salt Lake, in the Territory of Utah, this 23rd day of October, in the year of our Lord one thousand eight hundred and ninety-three.

C. S. ZANE,
Chief Justice of Utah.

Due service of the above citation admitted this 25th day of October, 1893.

RAWLINS & CRITCHLOW.
WALDEMAR VAN COTT.

Endorsed: # 286. Chas. L. Hannaman *vs.* L. C. Karrick, appellant. Citation. Filed in the supreme court Oct. 26, 1893, at Salt Lake City, Utah. Jos. P. Bache, clerk, by John C. Shipp, dep. cl'k.

211 In the Supreme Court of the United States, October Term, 1893.

L. C. KARRICK, Appellant,
vs.
CHARLES L. HANNEMAN, Respondent.

Assignment of Errors.

And now comes the said L. C. Karrick, appellant, by J. G. Sutherland, his attorney, and assigns error to the decision of the supreme court of the Territory of Utah in the judgment of said court against him in favor of the respondent, Charles L. Hanneman:

1. Said court erred in holding that the partnership between said parties was not dissolved on the 1st of February, 1888, by reason of the facts stated and found in the 3rd finding and in giving said Charles L. Hanneman one-half of the profits of the business done by said appellant subsequent to said date.

2. The court erred in affirming the decision of the court below in sustaining the objection of appellant Karrick to the admission in evidence of the letter dated January 10, 1890, marked Exhibit "C," of which letter the following is a copy:

"SALT LAKE CITY, UTAH, *Jan. 10th*, 1890.

L. C. Karrick:

I am notified that you have disposed of all the assets and property belonging to the firm of Hanneman & Co., and, as you have not consulted me nor accounted to me in any way in respect to this business or the purchase of it, I now request that you account
212 and pay over to me my proportion of all moneys derived in any way from said business or which ought to have been derived from it, together with all damages which I have sustained by being excluded by you from any participation in the management of said business.

C. L. HANNEMAN."

3. The court erred in affirming the decision of the court below in sustaining the objection of appellee Hanneman to the following question propounded by the appellant:

"And that amount was contrary to your agreement, was it not?"

4. The court erred in affirming the decision of the court below in sustaining the objection of appellee Hanneman to the admission in evidence of the note represented by Exhibit "H" in the following words:

"EXHIBIT H."

$1,111.80. SALT LAKE CITY, UTAH, *Sept. 10th*, 1885.

Six months after date, for value received, we jointly and severally promise to pay to Thomas Lanktree or order eleven hundred and eleven dollars and eighty cents, with interest at the rate of one and one-half per cent. per month from date until paid, and with ten per cent. attorney's fees in case the holder is obliged to enforce payment at law.

Payable at Mutual Exchange bank, Evanston, Wyo. Due March 10, 1886.

(Signed) C. L. HANNAMAN.
W. H. YEARIAN.

(Written on face of note is:) Cancelled. Received payment in full Feb'y 27th, 1886. Thomas Lanktree.

(On back is marked:) Exhibit "H," S. A. M.

5. The court erred in affirming the decision of the court below in sustaining the objection of appellee Hanneman to the following question propounded by appellant Karrick in these words:

213 "For what purpose did you devote the money which you realized on the Robert Taucy note? Did it go into the business?"

6. The court erred in affirming the decision of the court below in admitting in evidence, against the objection of appellant Karrick, the deed from Louis C. Karrick and Sarah E. Karrick to W. H. Spafford, represented by Exhibit "A."

7. The court erred in affirming the decision of the court below in sustaining the objection of appellee Hanneman to the following question propounded by appellant Karrick to the witness Wallace:

"The proposition which I desire you to figure out for the court is this: Taking the stock in trade as contributed to the business at its valuation, fixing the amount contributed by Karrick and the amount contributed by Hanneman; then take into consideration the business as transacted by the firm from the start up to the close, as testified by you in this case; devote one-half of the net profits to the repayment of Karrick on his $15,000, so far as it goes, the other net profits went into the business and constituted a part of the business, except that Hanneman and Karrick each after January 1, 1887, could draw $125 per month; take into your calculation the amount of net profits which they drew, $1,500 apiece, and after you have made a summary charging Karrick with the management and control of the whole thing, give the firm credit for what he has taken out, also for what Hanneman has taken out, then divide the firm profits, four-fifths to Karrick and one-fifth to Hanneman, and give us the result, please, as stated in this contract and explained by me."

8. The court erred in affirming the decision of the court below in sustaining the objection of appellee Hanneman to the following question propounded by appellant Karrick to the witness Wallace: 214

"Then, Mr. Karrick's credit being $2,100.40, and Mr. Hanneman's $10,923.43, will you be kind enough to state to the court how much Karrick would be owing Hanneman upon an accounting?"

9. The court erred in affirming the decision of the court below in admitting in evidence, over the objection of appellant Karrick, the paper purporting to be a statement of the profits of Bast-Terry Mercantile Company for the year 1890.

10. The court erred in affirming the decision of the court below in striking out that part of the testimony of appellant Karrick to the effect that whilst appellee Hanneman was absent there was a draft on Hanneman and Company for money to meet which the company had no funds, and that thereupon the appellant Karrick guaranteed individually the payment of said draft.

J. G. SUTHERLAND,
Counsel for Appellant.

Endorsed on back: No. —. In the Supreme Court of the United States, October term, 1893. L. C. Karrick, appellant, *vs.* Charles L. Hanneman, respondent. Assignment of errors. Filed Oct. 26, 1893. Jos. P. Bache, clerk. J. G. Sutherland, att'y for appellant.

215 Know all men by these presents that we, Lewis C. Karrick, as principal, and Geo. A. Lowe, W. E. Smedley, E. D. Woodruff, and Peter W. Madsen, as sureties, are held and firmly bound unto Charles L. Hannaman in the full and just sum of twenty thousand dollars, lawful money of the United States, to be paid to the said Charles L. Hannaman, his heirs, executors, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 11th day of September, 1893.

Whereas lately, at a term of the supreme court of the Territory of Utah in a suit pending in said court between Charles L. Hannaman, plaintiff, and Lewis C. Karrick, defendant, a final judgment was rendered by said court on the 30th day of August, 1893, affirming a judgment of the district court of the third judicial district of Utah Territory against said defendant in favor of said plaintiff, for the sum of $9,040.53 *dollars*, including costs taxed at $529.50 *dollars*, and said defendant having appealed from said final judgment of affirmance and the costs thereof to the Supreme Court of the United States and for a stay of all proceedings therein pending said appeal:

Now, therefore, the condition of this obligation is such that if the said appellant prosecute said appeal to effect and answer all damages and costs if he fail to make his plea good and pay or cause to be paid all interest and costs on the appeal and just damages for delay, together with the amount of said judgment or any judgment
216 which may be entered against him in case said appeal shall fail to be made good and said judgment be affirmed in whole or in part, or in case said appeal shall be dismissed, then this obligation to be void; otherwise to be and remain in full force and effect.

LEWIS C. KARRICK. [SEAL.]
GEO. A. LOWE. [SEAL.]
W. E. SMEDLEY. [SEAL.]
E. D. WOODRUFF. [SEAL.]
PETER W. MADSEN. [SEAL.]

I hereby approve the foregoing bond on appeal to the Supreme Court of the United States, and certify the same to be good and sufficient as a supersedeas in said action.

C. S. ZANE,
Chief Justice.

Endorsed: #286. Title court and cause. Supersedeas bond and bond for costs. Filed in the supreme court Oct. 23, 1893, at Salt Lake City, Utah. Jos. P. Bache, clerk.

217 In the Supreme Court of Utah Territory, Regular June Term, 1893.

SATURDAY, *October* 28*th*

CHARLES L. HANNAMAN
vs.
L. C. KARRICK, Appellant.

In this cause, the petition for rehearing and to modify and correct judgment heretofore filed by respondent having been fully considered, it was ordered that the judgment of this court heretofore made and entered on the 30th day of August, A. D. 1893, herein be, and the same is hereby, set aside, and it was considered, ordered, and adjudged that the judgment of the district court therein be, and the same is hereby, modified by deducting therefrom the sum of one thousand five hundred dollars, and the judgment so modified is affirmed with costs.

218 In the Supreme Court of the Territory of Utah.

CHARLES L. HANNAMAN, Plaintiff and Respondent,
vs.
LEWIS C. KARRICK, Defendant and Appellant.

United States of America to Charles L. Hannaman and to J. L. Rawlins and Waldemar Van Cott, his attorneys, Greeting:

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States, at Washington, D. C., within sixty days from the date hereof, pursuant to and to answer an appeal filed in the office of the clerk of the supreme court of the Territory of Utah in the above-entitled suit, in which you, the said Charles L. Hannaman, is plaintiff and appellee and Lewis C. Karrick is defendant and appellant, to show cause, if any there be, why the judgment of the supreme court of the Territory of Utah, rendered against said appellant on the 28th day of October, 1893, should not be corrected and speedy justice done to the parties in that behalf.

Witness the Honorable Charles S. Zane, chief justice of the Territory of Utah, this 8th day of December, 1893.

C. S. ZANE,
Chief Justice of Utah.

Service of the foregoing citation admitted this 12th day of December, 1893, waiving no rights.

J. L. RAWLINS, *V. C.*
WALDEMAR VAN COTT.

[Endorsed:] Supreme court Utah. Charles L. Hannaman, resp't, *vs.* Lewis C. Karrick, app'l't. Citation. Original. Filed in the supreme court Dec. 13, 1893, at Salt Lake City, Utah. Jos. P. Bache, clerk.

219 In the Supreme Court of the United States, October Term, 1893.

L. C. KARRICK, Appellant,
vs.
CHARLES L. HANNEMAN, Respondent.
} Assignment of Errors.

And now comes the said L. C. Karrick, appellant, by J. G. Sutherland, his attorney, and assigns error to the decision of the supreme court of the Territory of Utah in the judgment of said court against him in favor of the respondent, Charles L. Hanneman.

1. Said court erred in holding that the partnership between said parties was not dissolved on the 1st day of February, 1888, by reason of the facts stated and found in the 3rd finding and in giving said Charles L. Hanneman one-half of the profits of the business done by said appellant subsequent to said date.

2. The court erred in affirming the decision of the court below in sustaining the objection of appellant Karrick to the admission in evidence of the letter dated January 10, 1890, marked Exhibit "C," of which letter the following is a copy:

"SALT LAKE CITY, UTAH, *Jan. 10th*, 1890.

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220 not consulted me nor accounted to me in any way in respect to this business or the purchase of it, I now request that you account and pay over to me my proportion of all moneys derived in any way from said business or which ought to have been derived from it, together with all damages which I have sustained by being excluded by you from any participation in the management of said business.

"C. L. HANNEMAN."

3. The court erred in affirming the decision of the court below in sustaining the objection of appellee Hannaman to the following question propounded by the appellant:

"And that amount was contrary to your agreement, was it not?"

4. The court erred in affirming the decision of the court below in sustaining the objection of appellee Hanneman to the admission in evidence of the note represented by Exhibit "H" in the following words:

"EXHIBIT H."

$1,111.80. SALT LAKE CITY, UTAH, *Sept. 10th*, 1885.

Six months after date, for value received, we jointly and severally promise to pay to Thomas Lanktree or order eleven hundred and eleven dollars and eighty cents, with interest at the rate of one and one-half per cent. per month from date until paid and with ten per cent. attorney's fees in case the holder is obliged to enforce payment at law.

Payable at Mutual Exchange bank, Evanston, Wyo. Due March 10, 1886.

(Signed) C. L. HANNAMAN.
W. H. YEARIAN.

(Written on face of note is:) Cancelled. Received payment in full Feb'y 27th, 1886. Thomas Lanktree.
(On back is marked:) Exhibit "H," S. A. M.

5. The court erred in affirming the decision of the court below in sustaining the objection of appellee Hanneman to the following question propounded by appellant Karrick in these words: "For what purpose did you devote the money which you realized on the Robert Taucy note? Did it go into the business?"

6. The court erred in affirming the decision of the court below in admitting in evidence, against the objection of appellant Karrick, the deed from Louis C. Karrick and Sarah E. Karrick to W. H. Spafford, represented by Exhibit "A."

221 7. The court erred in affirming the decision of the court below in sustaining the objection of appellee Hanneman to the following question propounded by appellant Karrick to the witness Wallace: "The proposition which I desire you to figure out for the court is this: Taking the stock in trade as contributed to the business at its valuation, fixing the amount contributed by Karrick and the amount contributed by Hanneman, then take into consideration the business as transacted by the firm from the start up to the close as testified by you in this case; devote one-half of the net profits to the repayment of Karrick on his $15,000, so far as it goes; the other net profits went into the business and constituted a part of the business, except that Hanneman and Karrick each, after January 1, 1887, could draw $125 per month; take into your calculation the amount of net profits which they drew, $1,500 apiece, and after you have made a summary charging Karrick with the management and control of the whole thing give the firm credit for what he has taken out, also for what Hanneman has taken out, then divide the firm profits, four-fifths to Karrick and one-fifth to Hanneman, and give us the result, please, as stated in this contract and explained by me."

8. The court erred in affirming the decision of the court below in sustaining the objection of appellee Hanneman to the following question propounded by appellant Karrick to the witness Wallace: "Then, Mr. Karrick's credit being $2,100.40 and Mr. Hanneman's $10,923.43, will you be kind enough to state to the court how much Karrick would be owing Hanneman upon an

222 accounting?"

9. The court erred in affirming the decision of the court below in admitting in evidence, over the objection of appellant Karrick, the paper purporting to be a statement of the profits of Bast-Terry Mercantile Company for the year 1890.

10. The court erred in affirming the decision of the court below in striking out that part of the testimony of appellant Karrick to

the effect that whilst appellee Hanneman was absent there was a draft on Hanneman and Company for money, to meet which the company had no funds, and that thereupon the appellant Karrick guaranteed individually the payment of said draft.

11. The court erred in rendering the judgment herein after said court had lost jurisdiction of the case by appeal to this court.

J. G. SUTHERLAND,
Counsel for Appellant.

222½ [Endorsed:] No. —. In the supreme court of the United States, October term, 1893. L. C. Karrick, appellant, *vs.* Charles L. Hanneman, respondent. Assignment of errors. Filed in the supreme court Jan. 2, 1894, at Salt Lake City, Utah. Jos. P. Bache, clerk. J. G. Sutherland, att'y for appellant. Filed in the supreme court Jan. 2, 1894, at Salt Lake City, Utah. Jos. P. Bache, clerk.

223 Know all men by these presents that we, Lewis C. Karrick, as principal, and George A. Lowe, Wm. E. Smedley, E. D. Woodruff, and P. W. Madsen, as sureties, are held and firmly bound unto Charles L. Hannaman in the just and full sum of twenty-three thousand dollars, lawful money of the United States, to be paid to the said Charles L. Hannaman, his heirs, executors, or assigns; for which payment, well and truly to be made, we hereby bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 30th day of November, 1893.

Whereas lately, at a term of the supreme court of the Territory of Utah, in a suit pending in said court between Charles L. Hannman, plaintiff, and Lewis C. Karrick, defendant, a final judgment was rendered by said court on the 28th day of October, 1893, affirming a judgment of the district court of the third judicial district of Utah Territory in favor of said plaintiff for the sum of ten thousand five hundred and forty and $\frac{53}{100}$ ($10,540.53) dollars, including costs, taxed at $529.50, and said defendant having appealed from said final judgment of affirmance and the costs thereof to the Supreme Court of the United States and for a stay of all proceedings therein pending said appeal:

Now, therefore, the condition of this obligation is such that if the said appellant prosecute said appeal to effect and answer all damages and costs if he fails to make his plea good and pay or cause to be paid all interest and costs on the appeal and just damages for delay, together with the amount of said judgment or any

224 judgment which may be entered against him in case said appeal shall fail to be made good and said judgment be affirmed in whole or in part or in case said appeal shall be dismissed, then this obligation to be void; otherwise to be and remain in full force and effect.

LEWIS C. KARRICK. [SEAL.]
GEO. A. LOWE. [SEAL.]
W. E. SMEDLEY. [SEAL.]
E. D. WOODRUFF. [SEAL.]
P. W. MADSEN. [SEAL.]

I hereby approve the foregoing bond on appeal to the Supreme Court of the United States, and certify the same to be good and sufficient as a supersedeas in said action.

C. S. ZANE,
Chief Justice.

December 8th, 1893.

Endorsed: Title court and cause. Supersedeas bond and bond for costs. Filed in the supreme court Dec. 13, 1893, at Salt Lake City, Utah. Jos. P. Bache, clerk.

225 UNITED STATES OF AMERICA, } ss:
Territory of Utah, }

I, Joseph P. Bache, clerk of the supreme court of Utah, in pursuance of an appeal allowed in the case of Charles L. Hannaman, respondent, *vs.* Lewis C. Karrick, appellant, lately pending in said court, do return attached hereto a transcript of the record and proceedings, opinion, assignment of errors, supersedeas bond, and bond for costs, together with the original citation, all in and of said court in said cause, to the Supreme Court of the United States, and I hereby certify that said attached transcript of said record and proceedings, opinion, assignment of errors, supersedeas bond, and bond for costs is a full, true, and complete copy of the several originals thereof on file or of record in my office.

In witness whereof I hereunto set my hand and affix the seal of the supreme court of Utah Territory, this 6th day of January, A. D. 1894, at Salt Lake City, Utah.

Seal Supreme Court, Territory of Utah, United States of America.

JOSEPH P. BACHE,
Clerk Supreme Court of Utah.

Endorsed on cover: Case No. 15,511. Utah Territory supreme court. Term No., 332. Lewis C. Karrick, appellant, *vs.* Charles L. Hannaman. Filed February 17, 1894.

the effect that whilst appellee Hanneman was absent there was a draft on Hanneman and Company for money, to meet which the company had no funds, and that thereupon the appellant Karrick guaranteed individually the payment of said draft.

11. The court erred in rendering the judgment herein after said court had lost jurisdiction of the case by appeal to this court.

J. G. SUTHERLAND,
Counsel for Appellant.

222½ [Endorsed:] No. —. In the supreme court of the United States, October term, 1893. L. C. Karrick, appellant, *vs.* Charles L. Hanneman, respondent. Assignment of errors. Filed in the supreme court Jan. 2, 1894, at Salt Lake City, Utah. Jos. P. Bache, clerk. J. G. Sutherland, att'y for appellant. Filed in the supreme court Jan. 2, 1894, at Salt Lake City, Utah. Jos. P. Bache, clerk.

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GEO. A. LOWE. [SEAL.]
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Endorsed on cover: Case No. 15,511. Utah Territory supreme court. Term No., 332. Lewis C. Karrick, appellant, *vs.* Charles L. Hannaman. Filed February 17, 1894.

Brief of Wilson for Appellant.

OCT 24 1896
JAMES H. McKENNEY,
CLERK

Filed Oct 24, 1896.

Supreme Court of the United States.

October Term, 1896.

LEWIS C. KARRICK, Appellant,

vs.

CHARLES L. HANNAMAN, Appellee.

Nos. 72 and 73.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF UTAH.

BRIEF FOR APPELLANT,

By JEREMIAH M. WILSON.

J. G. SUTHERLAND,
A. HOWAT, and
C. W. BENNETT,
Of Counsel.

McGILL & WALLACE, LAW PRINTERS, Washington, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1896.

LEWIS C. KARRICK, Appellant,
vs.
CHARLES L. HANNAMAN.
Nos. 72 and 73.

Appeal from the Supreme Court of the Territory of Utah.

Statement.

This is an action for the dissolution of a partnership and for an accounting.

The bill of complaint filed in the District Court for the Third Judicial District of the Territory of Utah by Charles L. Hannaman against Lewis C. Karrick and The Bast-Marshall Mercantile Company, alleges:

That the Bast-Marshall Mercantile Company is a corporation organized under the laws of Utah; that on February 3, 1886, plaintiff entered into a partnership with the defendant Karrick, under an agreement attached thereto and marked A; that, upon the making of said agreement, plaintiff and defendant Karrick commenced and carried on a mercantile and laundry business, plaintiff in all respects performing his part of the agreement until on or about February 1, 1888.

That on the last named date the defendant Karrick took *exclusive possession of the partnership books, stock, and premises, and has ever since prevented plaintiff from having access thereto, or in any manner participating in said business and in the benefits of the same;* that plaintiff has at all times been ready and willing to perform his part of said agreement, etc., and that, during the time aforesaid, the defendant Karrick wrongfully, and in fraud of the rights of plaintiff, operated and controlled said business for his own exclusive use and benefit, and converted and applied to his own exclusive use and benefit, from the receipts and profits thereof, a large sum of money, greatly exceeding the proportion thereof to which he was entitled.

That on or about the 1st day of January, 1890, the defendant Karrick, without the knowledge or assent of plaintiff, undertook to sell to the Bast-Marshall Company all the assets, stock in trade, good will, and property of every description owned and held by said partnership; and that the said Bast-Marshall Company, on or about said date, entered into and took possession of said property, and, in collusion with the defendant Karrick, wrongfully withholds said property from plaintiff; that the said company took said property with full notice of the rights of plaintiff; that the said assets, stock in trade, and good will of said business are of great value, the net profits of said business accruing during the past two years being not less than $15,000 per year.

Plaintiff prays that the partnership be dissolved; that a receiver be appointed to take charge of said property; that the defendants be restrained by injunction from interfering; that the property be applied to the payment of the partnership debts, the remainder to be divided among the parties according to their respective rights; that the transfer to the Bast-Marshall Company be set aside and cancelled; that defendants be required to account, and for general relief.

The separate answer of the defendant Karrick (*R., p. 7*), admits that plaintiff and said defendant entered into a partnership as alleged, and that they carried on said business until February 1, 1888, but expressly denies that plaintiff, in all respects, performed his part of said agreement, and alleges that the plaintiff failed and neglected so to perform his part, and conducted said business to the verge of bankruptcy; defendant admits that on said last-named date he *took possession of said premises and business*, but denies that he prevented plaintiff from having access to the books and from participating in any manner in said business, and alleges that when he so took possession the said firm was insolvent and heavily in debt; that plaintiff owed said firm a large sum of money which could not be collected because of plaintiff's insolvency; that plaintiff also owed this defendant a large sum of money, and that the partnership theretofore existing between the parties was then and there dissolved.

The said answer then denies substantially all the other allegations of the complaint; and for further answer, *and by way of cross complaint*, says that owing to the importunities and representations of plaintiff, as to possible profits, etc., he entered into said contract of partnership, and paid the plaintiff $5,000 for one-half interest in the said Troy Steam Laundry, machinery, and plant, and placed to plaintiff's credit at the bank $15,000 for the purchase of the mercantile business of W. H. Yearian; that defendant had never had any experience in the laundry business, but relied entirely upon the truthfulness of the representations of plaintiff; that defendant also loaned plaintiff $5,000, and took, as security therefor, a chattle mortgage upon plaintiff's half in the laundry machinery.

Defendant further shows that it was afterwards ascertained that the said Yearian mercantile stock could not be purchased for $15,000, as represented by plaintiff, but

that the purchase price amounted to $17,250, of which amount plaintiff agreed to pay $2,250, and did actually pay $250, giving notes for the balance of $2,000; that when these notes came due plaintiff failed and neglected to pay the same, and defendant was compelled to take up and pay them in order to protect the credit of the firm, and that plaintiff has failed to this day to pay said notes; defendant says that at that time, of entering into said agreement, he was superintendent of a group of mines, and, his time and attention being fully occupied, he was unable to devote himself to the concerns of Hannaman & Co., and accordingly left the entire charge and control of matters to the plaintiff; that immediately after the said contract was signed, plaintiff absented himself for six weeks, saying that he was going East, to purchase machinery for a dye works, which they contemplated running, having agreed to be gone only two weeks, and that defendant was, therefore, obliged, at great financial loss and inconvenience to himself, to take active control of the business until plaintiff returned.

Defendant further shows that, upon his return, plaintiff entered upon the charge of said business and conducted the same without rendering any statement to defendant or giving him any information until January 2, 1887, when defendant insisted upon, and after much delay, received a statement showing that the business was being run at a profit. Defendant found, however, upon an investigation of affairs, that the stock had not been increased; that there was a large overdraft at the bank, and that the business was losing money. Defendant also found that upon said trip East, plaintiff had expended for sundry items $3,049.10, and that he had used the money of the firm to the amount of $3,848.62, leaving unaccounted for the sum of $797.52; and defendant says that notwithstanding the provision of said agreement

that no money should be drawn out of the business until January 1, 1887, plaintiff drew from said business sums aggregating $2,227.57 prior to said date.

Defendant further shows that the plaintiff grossly mismanaged said business, so that on the 1st of January, 1888, there was an overdraft at the bank against the firm of $6,972.52, the firm also owing $6,000 additional; that the laundry business was running at very small profit, and the store and dye works at a loss; that the stock was badly damaged, neglected, and incomplete; that the laundry was in a condition to be closed down; that the cess pools had been neglected and had become a public nuisance, and that the machinery was in very bad shape. Defendant says that this being the condition of affairs, he had a consultation with plaintiff, informing him that the firm was constantly losing money; that the management of plaintiff was bad and incompetent; and that he desired to wind up the affairs of said company; that he would give plaintiff an opportunity to buy him out, or that he could retire, leaving defendant to assume the indebtedness.

That plaintiff agreed to this proposition, and asked defendant for 60 days time to raise the money to buy him out, at the end of which time, plaintiff having informed defendant that he could not raise the money, defendant thereupon took possession, and from that time carried on the business in the name of L. C. Karrick, for his own exclusive use and benefit, in the same place in which Hannaman & Co. did business, until the month of December, 1889, when he sold and transferred the same to Messrs. A. G. Bast, James A. Brown, E. D. Woodruff, James Marshall, and L. L. Terry; that he was paid therefor, at the time of said purchase, $5,000, and afterwards the balance of $24,791.87; that the said purchasers took exclusive possession, and in January, 1890, transferred said property and business to the Bast-Marshall

Mercantile Company, a corporation, and received payment in full for the same.

Defendant further says that at the time of said purchase the said purchasers had no knowledge of any partnership between plaintiff and this defendant, or of the claim of plaintiff as alleged, and defendant alleges, upon information and belief, that plaintiff had knowledge of said negotiations, but did not make known to said purchasers any claim or that he was a partner in said business; and defendant avers that, by reason of delay in bringing this action, etc., he is estopped from asserting any right or title to said property; that the firm of Hannaman & Co. was completely dissolved on or about the 1st of February, 1888; that defendant paid the aforesaid firm debt, and ran the business in his own exclusive name and for his own benefit without objection from the plaintiff until the same was sold as aforesaid; that said sale and negotiations therefor were made in good faith.

Wherefore defendant prays judgment for $7,000 with interest; that plaintiff be required to pay costs, and for other relief.

Upon motion and consent of the attorneys for the respective parties, the case was referred to Samuel A. Merritt, as sole referee, to hear, try and determine the issues, etc. The action as to the defendant, the Bast-Marshall Mercantile Company, was, as aforesaid, dismissed. After hearing the evidence in the case, the said Referee found the facts set forth in the Record. (*R., pp. 22–24*):

Thereafter the said District Court for the Third Judicial District of Utah adopted the report of the Referee (*R., p. 26*), and decreed that the said findings of fact and conclusions of law "are hereby adopted and made the findings of fact and conclusions of law and decree of this court." Defendant then moved for a new trial, which was overruled (*R., pp. 27, et seq.*), and an appeal was thereupon taken and prosecuted to the Supreme

Court of the Territory, the opinion of which latter court, sustaining the judgment of the court below, will be found on page 117 of the Record. The decree of the court below was modified, however, by the Appellate Court, which allowed the defendant $3,000 for personal expenses, being at the rate of $125 per month, as per the said agreement, which he would have been allowed to draw during the two years in which he conducted the business of the firm, thus reducing the amount of the judgment to $9,040.53.

Afterwards, on the 28th of October, 1893, the said Supreme Court of the Territory of Utah, upon petition for rehearing filed by respondent, and after the allowance and perfection of an appeal to this court, again modified said decree by reducing the amount of its former judgment $1,500, instead of $3,000 (*R., p. 127*).

Assignment of Errors.

1. The court erred in holding that the partnership between said parties was not dissolved on the 1st of February, 1888, by reason of the facts stated and found in the third finding, and in giving the said Charles L. Hannaman one-half of the profits of the business done by the said appellant subsequent to said date.

2. The court erred in holding that the evidence adduced before the Referee was sufficient to justify the said third and the sixteenth findings of fact.

3. The court erred in affirming the decision of the court below in sustaining the objection of the appellant to the admission in evidence of the letter dated January 10, 1890, marked Exhibit C, set forth in the second assignment on page 128 of the Record.

4. The court erred in affirming the decision of the court below in sustaining the objection of the appellee, Hannaman, to the following question propounded by appellant: "And that amount was contrary to your agreement, was it not?"

5. The court erred in affirming the decision of the court below in sustaining the objection of the appellee to the admission in evidence of the note represented by Exhibit H, set forth on page 128 of the Record.

6. The court erred in affirming the decision of the court below in sustaining the objection of the appellee, Hannaman, to the following question propounded by appellant in these words: "For what purpose did you devote the money which you realized on the Robert Taucy note? Did it go into the business?"

7. The court erred in affirming the decision of the court below in admitting in evidence, over the objection of appellant, Karrick, the deed from Louis C. Karrick and Sarah Karrick to W. H. Spofford, represented by Exhibit A.

8. The court erred in affirming the decision of the court below in sustaining the objection of appellee to the following question propounded by appellant to the witness Wallace:

"The proposition which I desire you to figure out for the court is this: Taking the stock in trade as contributed to the business at its valuation, fixing the amount contributed by Karrick and the amount contributed by Hannaman, then take into consideration the business as transacted by the firm from the start up to the close, as testified by you in this case; devote one-half of the net profits to the repayment of Karrick on his $15,000, so far as it goes; the other net profits went into the busi-

ness and constituted a part of the business, except that Hannaman and Karrick each, after January 1, 1887, could draw $125 per month; take into your calculation the amount of net profits which they drew, $1,500 apiece, and after you have made a summary, charging Karrick with the management and control of the whole thing, give the firm credit for what he has taken out, also for what Hannaman has taken out, then divide the firm profits, four-fifths to Karrick and one-fifth to Hannaman, and give us the result, please, as stated in this contract and explained by me."

9. The court erred in affirming the decision of the court below in admitting in evidence, over the objection of appellant Karrick, the paper purporting to be a statement of the profits of the Bast-Terry Mercantile Company for the year 1890.

10. The court erred in affirming the decision of the court below in sustaining the objection of the appellee to the following question propounded by appellant Karrick to the witness Wallace:

"Then, Mr. Karrick's credit being $2,100.40 and Mr. Hannaman's $10,923.43, will you be kind enough to state to the court how much Karrick would be owing Hannaman upon an accounting?"

11. The court erred in affirming the decision of the court below in striking out that part of the testimony of appellant Karrick to the effect that whilst appellee Hannaman was absent there was a draft on Hannaman & Co. for money, to meet which the company had no funds, and that thereupon the appellant Karrick guaranteed individually the payment of said draft.

12. The court below erred in rendering judgment herein after said court had lost jurisdiction of the case by the perfection of the appeal to this court.

BRIEF.

Recapitulation.

The foregoing statement (possibly unnecessarily extended), for the purpose of distinctly presenting the principal question now before the court, may be reduced to a few essential facts, which we enumerate as follows:

1. The parties to this action, L. C. Karrick and C. L. Hannaman, entered into a written partnership agreement on the 3d of February, 1886 (*R., p. 3*), to continue for five years.

2. The plaintiff below (the appellee here) had invested in the capital stock of the said firm stock of the value of $5,000, an amount equal to which, however, he had borrowed from the defendant below (the appellant in this court), this loan being secured by a mortgage upon the interest of the appellee in the partnership property. The appellant had invested in this capital stock $20,000.

3. The firm business, in 1886, resulted in an apparent profit of $7,848.26, but this included $2,000 of fixtures which had been received by the firm as a bonus. The remaining profit of $5,848.26 was arrived at by taking the goods on hand on January 1, 1887, at the full invoice price, and all accounts due at their face value. Neither stock nor accounts were taken at their *actual* value. (*R., p. 49.*)

4. In 1887 there was a loss, as a result of the business of that year, of $3,413.35 (*R., p. 49*). The account of the firm had been overdrawn $6,000 or $7,000, the appellee having had entire charge during that year.

5. Dissensions arose; appellant charged the appellee with mismanagement; they quarreled, and, thereupon, on or about the 1st of February, 1888, the appellant, to use the language of the complaint, "took exclusive possession of the partnership books, stock and premises," and ever after prevented the appellee from participating in any manner in the business.

6. The appellant, having thus taken possession, afterwards carried on the business in his own name. He added new machinery at a large cost, made needed repairs, etc., and so continued until January 1, 1890, when he sold out the entire business to the Bast-Marshall Mercantile Company.

7. In the years 1888 and 1889, under the management of the appellant, the business yielded a profit, and the real question in this case is whether the appellee is entitled to have an accounting as to this business and its assets after the appellant took exclusive possession, or whether, having been thus excluded, his action should have been for damages for breach of contract.

8. On the 15th of February, 1888, the appellee sent the letter which is set forth on page 32 of the Record, giving appellant notice that he was ready and willing to perform his part of the agreement, but, aside from this, during the two years intervening between the time of his exclusion and the time of the sale, took no action whatever for the enforcement of his alleged rights, but stood by and allowed the appellant to carry on the business in his own name, appropriate the profits to himself, and finally to sell the same, as above.

9. The appellant continued in the exclusive possession, as above stated, and, on the 16th of May, 1888,

wrote the letter set forth on page 73 of the Record. This letter is as follows:

"C. L. HANNAMAN, Esq.

"DEAR SIR: The firm of Hannaman & Co. is dissolved. The business hereafter will be carried on by the undersigned.

"Very respectfully,

"L. C. KARRICK."

On the same day the appellant inserted in the *Salt Lake Daily Tribune* the following notice (*R., p. 66*):

"NOTICE. All accounts due the late firm of Hannaman & Co. in the store, No. 142 Main Street, the Troy Steam Laundry and the dye works, must be paid to the undersigned.

(*Signed*) "L. C. KARRICK."

10. The Referee took into account and allowed the appellee his alleged share of the profits that accrued after the 1st of February, 1888. Our contention is that the partnership was dissolved on the last-named day, and, therefore, that—

I.

The court below erred in holding that the partnership in question in this case was not dissolved on February 1, 1888, by reason of the facts stated and found in the third finding of the Referee, and in adjudging the appellee herein to be entitled to one-half of the profits of the business done by appellant subsequent to said date.

It will be seen from the foregoing statement, that the Referee, to whom the case was referred under the stipulation of counsel and order of the court (*R., p. 22*), found as a fact that the plaintiff and defendant below, on the

3d of February, 1886, entered into a partnership agreement, as stated in the complaint, and that, upon the execution of said agreement, the parties thereto commenced to carry on the mercantile and laundry business which is the subject of controversy in this case (*Findings 1 and 2, R., p. 22*). The Referee then found the facts stated in the third finding, as follows:

"3. That, about February 1, 1888, defendant Karrick took forcible, wrongful, and exclusive possession of all of said business, stock, partnership books and accounts, and the premises on which the same were situate, and on said last-named date the defendant Karrick forcibly and wrongfully ejected the plaintiff therefrom, and ever afterward prevented the plaintiff from participating and assisting in said business and performing his part of said agreement, and in participating in any way in the profits of said business."

From these findings of the Referee it also appears that, upon the said alleged wrongful and forcible expulsion and prevention of the plaintiff from further participation in said business, or in the profits thereof, the defendant Karrick took and held the sole and exclusive possession of the property and business of said firm from February 1, 1888, the date of said expulsion, until the 1st of January, 1890, when he sold the same to his co-defendant, the Bast-Marshall Company (as to which company, as we have already said, the suit was afterwards dismissed), taking and appropriating all the proceeds of said sale to himself; and it was for his alleged share of the profits arising from the conduct of said business, from the time of such expulsion to the time of said sale, that the appellee in this case brought the present suit.

It will be remembered that the partnership agreement (*R., p. 3*) under which the said parties entered upon and carried on their said business, until the same was terminated as above, provided that the term thereof should be five years; that the capital stock of said firm should

be $25,000; that of said capital stock plaintiff should furnish only $5,000, while the said Karrick was to furnish, and did furnish, $20,000, in addition to which he loaned plaintiff an amount equal to his said contribution, to wit, $5,000; that the said last-named $5,000 was secured by a mortgage on the interest of the said plaintiff in said firm property; that the plaintiff was to give his entire time and attention to the said firm business, while defendant was only to devote such time thereto as he might see fit; that each of said parties was to be allowed to draw not to exceed $125 per month for personal expenses, and that one half of the net profits of the business was to go to the defendant in repayment of the capital stock contributed by him, and the other half was to be allowed to remain in the business.

So that, it is apparent that, at the commencement of the said partnership business, the plaintiff, Hannaman, had contributed property of the value of only $5,000 to the capital stock of said firm, and had borrowed from the defendant, Karrick, an amount equal to his interest therein, which interest was mortgaged to the defendant to secure the payment of the $5,000 so borrowed. On the other hand, the defendant, Karrick, had contributed to the capital stock of said firm $20,000, and had loaned the said plaintiff $5,000 more on his said interest, in return for which unequal condition of their respective contributions the latter was to devote his entire time and attention to the management and prosecution of said business, and was to be allowed to draw $125 a month for his personal expenses. When the firm commenced business, therefore, the plaintiff had practically not a dollar at stake, his interest in the firm property being only sufficient to discharge his debt to the defendant, Karrick, and, instead of paying off his indebtedness, it was materially increased at the time of said expulsion.

This being the condition of affairs at the time of the

commencement of said business, the defendant claims, and introduced testimony before the Referee for the purpose of showing that the plaintiff, in the conduct of said business, was guilty of gross mismanagement and neglect, and that he in many ways violated the terms and conditions of the said partnership agreement, finally involving the firm so heavily in debt that the defendant was obliged to take some action for the protection of his property. The undisputed testimony shows (and this is admitted by the plaintiff himself *R., pp. 87, 88*), that the defendant Karrick was very much dissatisfied with the plaintiff's management, and that he desired, therefore, to terminate the said partnership.

With this end in view, the defendant Karrick submitted to the plaintiff a verbal proposition for the dissolution of said firm upon the following terms, to wit: that plaintiff, provided he desired to purchase the interest of defendant in said business, should be allowed sixty days within which to raise the money for that purpose; and, upon his failure to do so, defendant was to have the entire ownership and control of said partnership property and business in consideration for his assumption and payment of the firm's indebtedness. To this plaintiff assented. Upon the expiration of the period of time limited in said verbal agreement, plaintiff not having availed himself of such opportunity to purchase the interest of defendant, and having notified defendant that he could not raise the money, defendant took possession of said partnership property and business, and thereafter conducted the same, served notice upon the public, signed checks, and advertised in his own name, and on his own account, until he finally sold out to the Bast-Marshall Company, about two years after said dissolution. (*R., p. 71.*)

The verbal agreement, above referred to, was denied by the plaintiff in his testimony (*R., p. 87*), and the Ref-

erce found as a fact that it did not exist (*Finding 16, R.*, p. *24*), and that the said partnership was not dissolved by the act of the defendant in taking possession of said property and premises as aforesaid. Counsel for appellant Karrick, in the court below, contended that the evidence in the case was insufficient to justify the third finding of the Referee (last above quoted), and that, even if the said Karrick did take such forcible and wrongful possession of the partnership property and business, nevertheless such act amounted to, and accomplished, a complete dissolution of the partnership, and that the remedy of the injured party, if any he had, was by an action upon the contract for damages. The court below, however, held the reverse of these two propositions, basing its entire decision upon such holding and ignoring the other errors assigned in the case. (*See the opinion of the court at pp, 117 to 122 of the Record.*)

That the court below erred in so holding, we think there can be no doubt. It may be that, as contended by the appellee, there are cases and authorities which hold that a partnership entered into for a fixed period of time can, before the expiration of the period so fixed be dissolved only by mutual consent, by decree of a court of equity, or by the marriage, death or assignment of one of the members of the firm, but the weight of authority, so far as we have been able to find, seems to be in favor of the proposition that a partner can, at any time, if he believes his interest to be endangered by the manner in which the business is being conducted, or if his relations with his associates have become so unpleasant as to be productive of discord and strife, in good faith and without any fraudulent or evil motive, terminate the partnership by his own act, leaving the other member or members of the firm to his or their action for damages upon the contract for any injury he or they may have received thereby.

This principle is asserted in the 17th volume of the American and English Encyclopædia of Law, as follows (pp. 1097–8):

"While many courts and judges have denied and doubted the power of a partner to withdraw from, or voluntarily do any act which will effect the dissolution of, a partnership for a fixed term, *the prevalent doctrine would seem to be that there is no such thing as an indissoluble partnership*, and that the power given by one partner to another to make joint contracts in behalf of both is not only revocable, but one which he can not divest himself of the capacity to revoke. But however that question may be regarded, it is in either event clear that the delinquent partner is responsible in damages for his breach of covenant in so doing."

To this is cited:

Skinner v. *Dayton*, 19 Johnson (N. Y.), 513;
Solomon v. *Kirkwood*, 55 Mich., 256;
Slemmer's Appeal, 58 Pa. St., 155;
Mason v. *Connell*, 1 Wharton (Pa.), 381;
Blake v. *Dorgan*, 1 Green (Iowa), 537;
Cape Sable Company's Case, 3 Bland (Md.), 606;
Marquand v. *N. Y. Mfg. Co.*, 17 Johnson (N. Y.), 525;
Monroe v. *Hamilton*, 60 Ala., 226;
Miller v. *Bingham*, 50 Cal., 615;
Bank v. *New Orleans, &c., Co.*, 11 Wall, 624;

In section 577 of Bates on the Law of Partnership (p. 605), the author says:

"Whether, in a partnership for a fixed term, a member has the right to dissolve at will before the expiration, presents an interesting question upon which courts are divided. On the one hand is the partnership agreement, a contract to form a firm for a stated number of years, together with the fact that courts of equity entertain bills for dissolution of such partnerships for cause, and grant or refuse them according to the merits. At least

four-fifths of the cases I have cited in this chapter, of dissolutions for misconduct and dissensions, were partnerships for a fixed period unexpired. *On the other hand is the unwisdom, not to say impossibility, of compelling an unwilling and dissatisfied partner to remain in a connection at the nearly certain risk of discord, litigation and consequent loss.*"

The author then cites, in support of the latter view, several of the cases above cited from the Encyclopædia of Law.

In section 773 of Story on Partnership is the following:

"It was held (in the Roman law) that it was competent for any partner to renounce the partnership, whether it was a partnership at will or for a fixed period of time, even although he had expressly stipulated to the contrary, provided he acted in good faith and without any sinister motive. * * * *It was sufficient if the partner renounced for a reasonable cause*, and at a reasonable time."

The leading case in the United States upon this subject is that of *Skinner* v. *Dayton* (19 Johnson's N. Y. Rep., 513, 538), in which Justice Platt elaborately considers the question, and states his conclusion as follows:

"There can be no such thing as an indissoluble partnership. *Every partner has an indefeasible right to dissolve the partnership, as to all future contracts, by publishing his own volition to that effect, and, after such publication, the other members of the firm have no authority to bind him by any contract. Even where partners covenant with each other that the partnership shall continue for seven years, either partner may dissolve it the next day by proclaiming his determination for that purpose*, the only consequence being that he thereby subjects himself to a claim for damages for a breach of his covenant. The power given by one partner to another to make joint contracts for them both is not only a revocable power, but a man can do no act to divest himself of the power to revoke it."

The facts in the case of *Solomon et al.* v. *Kirkwood and Hollander* (55 Mich., 256) are substantially similar to those in the case at bar. The plaintiffs were jewelers doing business in Chicago, and sought to charge the defendants, as partners, upon a certain promissory note. The defendants Kirkwood and Hollander had entered into a written agreement of partnership for one year from July 6, 1882. Business was begun under this agreement and continued until the latter part of October of the same year, *when Kirkwood, becoming dissatisfied, locked up the goods and excluded Hollander altogether from the business.* He also notified all persons with whom the firm was dealing that the partnership was dissolved. Hollander subsequently went to Chicago and bought goods from plaintiffs on the firm account, giving therefor the note involved in the suit, to which he had signed the firm name. The court, by Cooley, J., says:

"We think the judge committed no error in his instructions respecting the dissolution of the partnership. The rule on this subject is thus stated in an early New York case." (The court then quotes from the case of *Skinner* v. *Dayton*, what we have already quoted above, and continues): 'To the same effect are *Mason* v. *Connell*, 1 Wharton, 381, and *Slemmer's Appeal*, 58 Penna. St., 155. *When one partner becomes dissatisfied, there is certainly no legal policy to be subserved by compelling a continuance of the relation, and the fact that a contract will be broken by the dissolution is no argument against the right to dissolve.* Most contracts may be broken at pleasure, subject, however, to responsibility in damages, and that responsibility would exist in breaking a contract of partnership, as in other cases.'"

In the said case of *Mason* v. *Connell* (1 Wharton, 381), the court held what is thus expressed in the syllabus:

"It seems that a partnership formed by articles for a definite period *may be dissolved by either partner before the termination of the period.*"

In the case of *Blake* v. *Dorgan* (1 Green's Iowa Rep., 540), the case of *Skinner* v. *Dayton* (*supra*) is again cited with approval, the court saying of the opinion of Justice Platt in that case:

"And the reasoning of Justice Platt is favorably commented on by Chancellor Kent in his Commentaries, Vol. 3, 55, and such is the French law; *and such we believe to be the more reasonable doctrine*, leaving the injured party to his remedy on the articles of covenant."

The same principle is again asserted in the case of the *Cape Sable Company* (3 Bland's Md. Chy. Rep., 606, 674), as follows:

"It is true in general that where a partnership is formed for a definite period of time, it can only be dissolved by the consent of the parties, or by the efflluxion of the specified period of time. Collyer on Partnership, 57. *But, if one of the contracting parties refuses to continue the partnership, or does any act which renders its further continuance impracticable, it must be then terminated, and the only remedy of him who wished its continuance is upon the contract for a compensation in damages for the injury he has thereby sustained.*"

In the opinion of the court below, it is admitted that there are authorities which affirm the proposition for which we now contend (*R., p. 119*), to wit, that appellant could and did effect a dissolution of the partnership in the way complained of, but the court seeks to escape from the effect of those authorities by holding that they do not apply to the case at bar, because, even admitting that they do correctly state the law, it must still be shown that there was sufficient cause for the dissolution of the partnership in the summary way which they hold to be authorized, and cites a number of authorities holding, in effect, that a party who is the author of the ill feeling or cause for dissolution ought not to be permitted to

make the relation he has himself induced the ground of the dissolution. The court states its reasons for refusing to interfere, as follows (*R., p. 119, 120*):

"Where the partnership is merely at will, the right of one partner to terminate it must be conceded: but where, by agreement, it is to continue for a time stipulated, the party seeking a dissolution before the expiration of the time ought in justice at least to be required to act in good faith and at a reasonable time and in a reasonable manner. In the case of a partnership for a stipulated time of duration, where the business has been established, is becoming profitable, and has good future prospects, to allow one of the partners *sua sponte* to expel the other and dissolve the partnership, with a view to appropriating the business to himself, would be to adopt a doctrine at once inequitable and unsupported by either reason or justice. There seems to be no good reason why a person should be allowed to commit a breach of his contract in such case, while in all other cases of flagrant violation, not within the partnership, he would be compelled to specifically perform, if it was within his power to do so."

While some of the cases we have above cited—notably that of *Solomon* v. *Kirkwood* (55 Mich., 256)—take the broad and unrestricted view that a partner may do the acts complained of in this case, and thereby effect a dissolution of the partnership, even without cause, still, we do not think that it is necessary for the appellant in the case at bar to rely entirely upon the integrity and soundness of such decisions for a reversal of the judgment below, as, in our opinion, the Record herein conclusively shows that all the elements necessary to bring the case within the most conservative of the authorities cited by the Supreme Court of the Territory exist in the case at bar.

In other words, the decision of the court below is based upon the hypothesis that the case of the appellant is utterly without merit—that, without reason or justifica-

tion of any kind, he assumed control and possession of the partnership property and business, and forcibly and wrongfully expelled the appellee therefrom, as found by the Referee; and this, of course, is the logical result of the court's refusal to set aside the Referee's finding to that effect. But we contend that the Record in this case presents sufficient grounds, and makes it the duty of the court, not only to reverse the decision of the court below upon the facts as found, but to set aside the findings of the Referee as a whole, as being manifestly unsupported by the evidence and facts as disclosed by the Record.

We therefore submit that, even in the absence of such a verbal agreement as that set up by the appellant in the present case (the terms of which are hereinbefore set forth), the said appellant, for the protection of his interests, and in good faith, could lawfully dissolve the partnership in question by the mere seizure of the firm property and the exclusion of his associate from further participation in the partnership business, and that the said partnership was so dissolved on the 1st of February, 1888.

And we think that it conclusively results from the following considerations that such a verbal agreement *was* made between said parties, by the terms of which, in the event of the failure of the appellee, within sixty days, to buy out the interest of the appellant, the appellant was to have the right to take exclusive possession of the partnership property and business, in consideration of his individually assuming all the outstanding indebtedness of the firm, and releasing the appellee from liability therefor—that it was under this agreement, and upon the failure of the appellee to exercise his said option, that the appellant took possession.

This brings us to a consideration of the question just stated.

II.

The court below erred in holding that the evidence adduced before the Referee was sufficient to justify the third and sixteenth findings of fact.

In inviting the attention of the court to the evidence and circumstances connected with this case, we desire to say that we are fully aware of the many decisions of this and other appellate courts regarding the presumptive accuracy and conclusive effect of the findings of fact of a Referee or other person appointed for the purpose of hearing testimony and reporting to the court thereupon, and as to the impossibility of reviewing such findings, "*unless some obvious error has intervened in the application of the law, or some serious or important mistake has been made in the consideration of the evidence*" (*Furber* v. *Ferris*, 145 U. S., 134); but we submit that the case at bar is one that comes within the exception just quoted.

The rule upon this subject is thus laid down in the case of *Paddock & Field* v. *Commercial Insurance Company* (104 Mass., 531), in which the opinion is by Mr. Justice Gray:

"Whenever, in the absence of special provisions of statute or of the rule of reference, a case at common law, or in equity or admiralty, is referred to a subordinate officer for the purpose of finding facts and reporting them to the court, whether he is styled assessor, auditor, master in chancery, or commissioner, *his findings may be reviewed by the court*; and the appropriate way of bringing them before the court for this purpose is by specific exceptions to his findings, and by his report of the evidence upon the points on which exceptions are taken; but his findings have the weight of a verdict, and, especially when they depend upon a conflict of the testimony, are not to be set aside unless they clearly appear to be erroneous."

This rule is recognized and approved by this court in the case just above cited of *Furber* v. *Ferris* (145 U. S., 134); also in the case of *Tilghman* v. *Proctor* (125 U. S., 149, 150), and *Kimberly* v. *Arms* (129 U. S., 525), and many others.

We therefore now proceed to a consideration and analysis of the evidence for the purpose of showing that the defendant below did not wrongfully and forcibly expel plaintiff and prevent his further participation in said business, but that he took possession thereof under the agreement hereinbefore mentioned.

At the trial of the case before the Referee, the defendant, Karrick, testified that an agreement was made between the plaintiff and himself for the transfer of Hannaman's interest to him and the dissolution of the partnership, in the event that Hannaman could not obtain the money necessary to purchase the interest of defendant (*R., p. 71*). This the plaintiff denied (*R., p. 88*), but admitted that he had made a proposition to Karrick with a view to the purchase of his interest. To determine whether such an agreement was made, it is not sufficient alone to consider the assertion of one and the denial of the other. In a matter of this kind, the attending and subsequent facts and circumstances are necessarily of great weight, and we, therefore, think it proper to consider the direct testimony as to whether there was such a verbal agreement as to dissolution, in the light of the partnership agreement, the relations of the respective parties to the firm and to each other at the time of the making of such verbal agreement, the condition of the business at that time, and the subsequent conduct of the parties in the premises.

As we have already shown, by the terms of the partnership agreement, the defendant Karrick loaned the plaintiff Hannaman $5,000, secured by a mortgage upon his interest in the firm property. At the commencement

of the partnership business the plaintiff Hannaman contributed only $5,000 to the capital stock, and borrowed of defendant $5,000, an amount equal to his interest in the firm property, as just stated. Karrick contributed $20,000 besides the $5,000 loaned to Hannaman, and so when the firm commenced business Hannaman in reality had not a dollar in the firm property. Of course Karrick was interested in maintaining the firm property and credit so that it would not only repay him the $20,000 he had so contributed to the capital stock, but also be a good and sufficient security for the money he had loaned to Hannaman. Practically he had contributed all of the capital stock and Hannaman had contributed nothing.

By the terms of the said partnership agreement (*R., p. 3*) no money was to be drawn from the business by either partner until after January 1, 1887; yet in violation of this stipulation the plaintiff, Hannaman, spent about $800 of the firm's money for private purposes on a trip that he had made to the East for the purpose of buying goods for the firm immediately after the partnership was formed, drawing out of the money of said sum, from April 1, 1886, to January 1, 1887, the aggregate sum of $1,428.05 (*R., pp. 49, 50, 62, 63, 85*). According to the testimony of the plaintiff's witness, H. A. Brown (*R., pp. 49, 50*), Hannaman drew out of the firm during the first eleven months of its existence, $1,500, after giving him credit for what he had put in during that time, so that at the expiration of that year (1886) he was $1,500 short. Hannaman testified that he was directed by defendant to draw out what money he needed during 1886 for personal expenses, which Karrick denied. It is not likely that Karrick would have given such permission to violate the terms of the agreement so soon after its execution in view of the fact that it would have reduced the value of his security. If anything of the kind had been contemplated or thought necessary, no direct provision

for its prevention would have been inserted in the agreement.

Again, Hannaman testified that he had full charge of the business in 1886 (*R., p. 32*), but the defendant testifies that he made an examination of the books of the firm and called upon the plaintiff for a statement of his expenses upon the trip east, and that Hannaman admitted that he had spent $800 for his personal expenses, but would not explain how he had used it (*R., p. 69*). Hannaman admits that when he was East he drew $3,848.62 and spent on the firm account only $3,049.10, so it is evident that during the year 1886 he drew, for his private purposes, $800 from the money of the firm, in violation of the said partnership agreement. At the close of the year 1886, the interest of Hannaman, as shown by the testimony of his own witness (*R., p. 49*), was but $3,509.69, and this was all the defendant had as security for his loan to the plaintiff of $5,000.

The undisputed testimony shows that the defendant, Karrick, was dissatisfied with plaintiff's management of the business, and that, in the fall of 1887, matters came to such a pass that they had differences and quarreled over it. The defendant, Karrick, testified that, in the fall of 1887, he examined the stock of the firm and found it in bad condition (*R., pp. 68, 69*), and that he then had a conversation with plaintiff in which he said to plaintiff that he considered his management bad, that the firm was losing money, and that, if compelled to pay its indebtedness, it would be bankrupt. Hannaman himself testified that Karrick expressed himself as being dissatisfied, that he wanted to get his money out of the business, as it was not paying, and that he said he was going to wind it up; that he said he was willing to sell if he could get out what he put in (*R., pp. 87, 88*). It is perfectly apparent from the testimony of both that the defendant was dissatisfied with Hannaman and distrustful of him.

Karrick then testifies to the verbal agreement and proposition already mentioned in this brief, to wit, that the plaintiff should have an option for sixty days upon the purchase of the defendant's interest, upon his failure to do which Karrick was to take entire possession, assume the indebtedness of the firm, and surrender to Hannaman his said $5,000 note. The defendant is corroborated as to there being such an agreement by the witnesses George O. Chaney, who heard the conversation between Hannaman and Karrick (*R., p. 77*), and by Miss Belle Green, who heard at least a portion of it (*R., p. 82*). It seems to us that, irrespective of the absurdity of the claim of the plaintiff, in view of his subsequent acquiescence in said arrangement, there is a clear preponderance of the *direct* testimony in support of the contention of the appellant that there was such an agreement or understanding between him and appellee; and, when all the surrounding and subsequent circumstances are taken into consideration, it results, beyond a shadow of doubt, in the establishment of the said agreement.

On the one hand we have the direct and positive testimony of three witnesses as to the existence of the fact contended for, and on the other the unsupported testimony of a single interested witness—the plaintiff himself. The witness Chaney testifies (*R., pp. 77, 78*):

"I am acquainted with the plaintiff and defendant in this action. I was once in their employment. I commenced in October, 1887, and continued until the business was closed up. * * * I heard the testimony of defendant Karrick with reference to a conversation which he had with plaintiff at the store, 142 South Main street, in the latter part of November, or the first of December, 1887. I heard part of that conversation. I was in the office at the time it started, and I went into the laundry. It started at the stove, and when I came back Mr. Hannaman and Karrick were in the office. I went to the cash office, which is across a small passageway from where they

were. It was probably a distance of six or seven feet. There was a door in the office where I stood, which, if I recollect rightly, was partly open. Mr. Karrick and Mr. Hannaman had quite a wordy discussion. I heard Mr. Karrick tell Hannaman that it was not run in a satisfactory manner to him, and that he wished to dissolve the partnership. Those were not the exact words, but that he wished to close the business up, and *he offered a proposition to Mr. Hannaman, and said: 'Then I will give sixty days to raise the money to buy me out, and if the money is not raised in that time I will take the business and pay all the debts.' He says, 'Is this satisfactory to you?' and Mr. Hannaman said it was.*"

Miss Belle Green, the other witness for defendant above referred to, as to this understanding, testified as follows (*R., p. 82*):

"I was employed at the store. * * * I remember a conversation had between Mr. Karrick and Mr. Hannaman last November or first of December, 1887, in the rear of the store. *I heard Mr. Hannaman say he would buy Mr. Karrick out at a certain time, and, if he did not do so, Mr. Karrick was to buy Mr. Hannaman out.* I don't remember all the conversation. *I think the time was sixty days.* This conversation took place in the rear of the store in the office. I was just across the hallway, maybe five or six feet from them, when the conversation took place. I could hear distinctly what the parties said. * * * I remember when Mr. Hannaman left the store. It was before that; I should think about sixty days, probably a little longer."

When it is considered that the business of the said firm was being run at a loss; that the defendant was dissatisfied with the plaintiff's management; that the plaintiff, in the year 1886, had withdrawn money from the firm, in violation of the partnership agreement, so that his interest which was mortgaged to secure the $5,000 loan, was reduced to $3,500, and that the business appeared to be constantly losing money, it would seem that this agreement between the parties for the dissolution of

the partnership in the manner testified to by the defendant, was not only the reasonable and natural one for them to make, but that such a course was absolutely necessary to save the large amount of money that the defendant had invested, part of which was without adequate security, as shown above, and to preserve the plaintiff's means of paying his debt. The defendant's interest in the firm, together with his said loan to Hannaman, represented all that there was in the business. The defendant held a mortgage on his partner's interest, *with authority to take and hold possession at any time he might deem himself insecure without possession* (*R., p. 96*). He was, therefore, in a position properly to insist upon a dissolution of the firm as a means to secure the payment of said loan, if for no other reason, and it was reasonable and proper that he should insist upon such a dissolution.

What was the reasonable and natural thing for the plaintiff to do under the circumstances? He was aware of the fact that his associate was dissatisfied with his management of the business, as appears from his testimony (*R., pp. 87, 88*); the business was being run at a loss; he had but $5,000 in the firm, the exact amount of which he owed Karrick, and which, under the terms of said mortgage, the defendant could take possession of at any time, and he doubtless appreciated the fact that things could not continue in the way matters were then being conducted. We think that the reasonable and most natural thing for the plaintiff to do, under these circumstances, was to accept the offer of the defendant upon the terms above mentioned, and, even if the fact of this matter were left entirely to conjecture, the probability is that such a proposition was made and accepted by the plaintiff. All doubt about this matter, however, is removed by the testimony of the witnesses above referred to.

The plaintiff says that he was excluded from possession on the 10th of February, 1888. As to what took place at the time, the testimony is conflicting, but the account of the plaintiff in his testimony is certainly exaggerated. The testimony of Leroy Decker, a witness called by plaintiff, does not sustain Hannaman's testimony and does not contradict that of the defendant in this regard (*R., p. 66*). All that this witness says is that the defendant "shoved Hannaman out into the sidewalk, in an angry way." It is not contended that the plaintiff willingly yielded possession to the defendant, but in this we see nothing inconsistent with the making of the said agreement. Having failed, during the sixty days allowed for that purpose, to find someone to buy out the defendant's interest, or to advance him the money to do so, the plaintiff naturally was reluctant to surrender his position as partner in a firm in the capital stock of which he had not the slightest pecuniary interest, but from which he was making a good living, and sharing in the management and control of an extensive establishment, by reason of which he derived such obvious business advantages.

As to the subsequent relations and procedure of these parties there is no dispute. The plaintiff never went to the store after that time. All that he did was to address a letter to the defendant, dated February 15, 1888, notifying him that he was ready and willing to continue in the performance of his part of the agreement, and stating that he would be glad to have defendant indicate his wishes in the matter (*R., p. 32*). In reply thereto, on the 16th of May, 1888, the defendant sent plaintiff a letter, stating that "the firm of Hannaman & Co. is dissolved. The business hereafter will be carried on by the undersigned." (*R., p. 73.*) Upon assuming control of the said business and property, the defendant expended large sums of money in making additions and improvements, and in paying off the indebtedness of the firm,

the overdrafts and outstanding debts being between $10,000 and $11,000. He had the letter and billheads marked with a rubber stamp: "L. C. Karrick, successor to Hannaman & Co." He drew all checks connected with the business in his individual name, and the name of the firm over the store door was changed so it read, "L. C. Karrick, successor to Hannaman & Co. (*R., p.* —). It is admitted (*R., p. 66*) that the defendant inserted in the Salt Lake *Daily Tribune* a notice reading as follows:

"NOTICE. All accounts due the late firm of Hannaman & Company in the store, No. 142 Main street, the Troy Steam Laundry and the dye works, must be paid to the undersigned.

(*Signed*) "L. C. KARRICK."

The defendant, Karrick, in short, treated the property as his own, and proclaimed to Hannaman and to the public generally, that he was the sole owner and proprietor of the said business as successor of the firm of Hannaman & Co. It is incredible, under all these circumstances, and there is absolutely no testimony in the Record (except that of the plaintiff himself) tending to show, that the defendant thrust the said plaintiff out of the store and took exclusive possession of the firm property without any color of title or claim of right. If he had done so, would not Hannaman in some way have resented it? Would he have stood tamely by and allowed his rights and property, if any he had, to be appropriated by the defendant without protest other than the communication above referred to, and without seeking redress in the courts? We do not believe that any man who had any rights or property to lose would deliberately wait for two years before taking any action whatever for their recovery and enforcement. Obviously the bill for dissolution and accounting filed by the plaintiff in this case, after more than two years had elapsed

since his expulsion, was an afterthought, and resorted to simply upon the chance of obtaining additional benefits from the defendant, to which he was in no way entitled.

If the determination of the question whether there was or was not such an agreement as we have endeavored to show existed, depended or rested entirely upon the direct testimony of the defendant, Karrick, and the witnesses Chaney and Green, on the one side, and Hannaman on the other, it might fairly be contended that the referee had based his conclusion upon his opinion as to the credibility of these witnesses (although there was not even an attempt to impeach them), which was the view taken by the court below, and because of which it hesitated to disturb the said findings of the referee; but in this case the corroborative facts and circumstances to which we have directed attention are all either admitted by the plaintiff, or established by uncontradicted testimony. This is not a question of the credibility of witnesses, but a question as to the proper deductions to be drawn from undisputed facts; and no findings of the Referee should induce this court to forego its right, and its manifest duty, to make such deductions from these admitted and unassailed facts, and the evidence in the case, as, in its own opinion, may be warranted thereby.

A fair and unprejudiced consideration of the testimony in this case, in the light of all the surrounding circumstances, must, as we think, lead the court to the conclusion that such an agreement of dissolution as that set up by the appellant in this case was made, and that, therefore, there is nothing in the Record to justify the third and sixteenth findings of the Referee.

III.

The Admission and Rejection of Evidence.

There are also a number of errors assigned in this case with regard to the admission and rejection of evidence. We will not attempt in this brief to bring them to the attention of the court by any extended argument upon their merits, but deem it sufficient merely to say that the action of the Referee in so admitting and rejecting the evidence specified in said assignment, over the objection and exception of the appellant, was so manifestly prejudicial to his case, and so utterly without justification or authority of law, that the judgment below should be reversed on this ground even if the court should decide that the other errors complained of are not sufficient to warrant such reversal. If considered necessary, the matters embraced by said assignments will be further discussed in the oral argument of this case.

Conclusion.

Under the conditions existing as to this business at the time, and the relations of the parties to each other and the firm, we submit that it was not "wrongful" in any legal sense for appellant to take exclusive possession and control of said business; and, irrespective of the question as to whether the agreement of dissolution was made, and even if there was no such agreement, the fact that the appellant took exclusive possession and control was a dissolution of the partnership, and the court below erred in not so holding.

Respectfully submitted,

J. M. Wilson.

Washington, D. C.,
October 21, 1896.

[redacted]

[redacted]

[redacted]

SUPREME COURT OF THE UNITED STATES.

No. 332.

OCTOBER TERM, 1895.

L. C. KARRICK, APPELLANT,

vs.

C. L. HANNAMAN, APPELLEE.

IN ERROR TO THE SUPREME COURT OF UTAH TERRITORY.

BRIEF FOR APPELLEE.

STATEMENT OF FACTS.

Appellee brought this action against appellant in the Third Judicial District Court of Utah Territory for an accounting, for dissolution of partnership, and for judgment for appellee's undivided proportion of partnership profits. Judgment was rendered for appellee against appellant by the District Court; the Judgment was afterwards affirmed by the Supreme Court of Utah Territory, slightly modified. Appellant then brought the case to this court.

Appellee and appellant entered into a written agreement of partnership dated February 3, 1896, for the period of *five years*, to carry on a men's furnishing and laundry business; losses and gains to be equally divided; the written agreement is found on Record pages 3-4.

This case was referred by the District Court to Samuel A. Merritt (afterwards Chief Justice of Utah Territory) for trial; the referee made his findings of fact, conclusions

of law and decree, and the same were afterwards adopted by the District Court and are found on Record pages 20-26.

The findings support the judgment in every particular; and in such case this court by Mr. Chief Justice Fuller, in 151 U. S. 450, said:

> "* * * The Supreme Court, in affirming the judgment, has determined that the findings of the trial court were justified by the evidence, and, apart from exceptions duly taken to rulings on the admission or rejection of evidence, our examination is limited to the inquiry, without reference to the weight of evidence or its sufficiency to support the special findings, whether the decree can be sustained upon those findings."

To same effect, 160 U. S. 313 Haws, vs. Victoria Cop. Min. Co. and cases cited.

(We have not received a copy of appellant's brief, and hence are compelled to discuss the points relied upon in the Supreme Court of Utah.)

BRIEF AND ARGUMENT.

Appellant contends the partnership was dissolved because he took forcible possession; and that though a partnership be for an unexpired definite period, yet that either partner may terminate the partnership agreement at any time without cause.

The object, of course, of this contention is to bar the appellee from sharing in any profits after his wrongful exclusion.

There are two conclusive answers to the above proposition:

POINT I.

In the first place, where one partner wrongfully excludes his co-partner, retains the partnership assets and property, continues the business, and makes profits, he is bound to account to such co-partner either for his share of the profits or for interest on the capital, at the latter's option.

In 138 N. Y. 369, Holmes v. Gilman, an action was brought to obtain an accounting of the amount of the partnership funds wrongfully taken by one partner and invested in life insurance policies, and that the proceeds of such policies should be impressed with the partnership trust. The plaintiff was successful.

The court, by Peckham, Justice, on page 376, said:

> "The claim of the plaintiff to recover the moneys arising from the payments of these policies is based upon the principle which allows a *cestui que trust* to follow trust funds and to appropriate to himself the property into which such funds have been changed, together with the increased value of such property, provided the trust fund can be clearly ascertained, traced and identified, and provided the rights of *bona fide* purchasers for value, without notice, do not intervene. The right has its basis in the right of property, and the court proceeds on the principle that the title has not been affected by the change made of the trust funds, and the *cestui que trust* has his option to claim the property and its increased value as representing his original fund. The right to follow and appropriate ceases only when the the means of ascertainment fail. It is a question of title." [Cases cited omitted.]

And further said, on page 377:

> " * * * Although partners do not in the strict sense of the term occupy the position of trustees towards each other and towards the firm funds, yet the position is one of a fiduciary nature, calling for the maintenance and exercise of the greatest good faith between them. Such a

relationship authorizes the same remedy on behalf of the wronged partner as would exist against a trustee, strictly so called, on behalf of a *cestui que trust.* (Per Jessel, M. R., In re Hallet's Estate, 13 Ch. Div. 696, 712.)"

In Collyer on Partnership, Sec. 324, it is said:

"Where upon the dissolution of a partnership, the partnership effects are not assigned, but the remaining partners continue to trade with the stock and capital of the original partnership, the profit and loss made by such trading must be brought into the account with the original firm. Thus, in an early case, Lord Keeper Harcourt declared, that, where one of two joint traders dies, and the survivor carries on the trade after the death of the partner, the survivor shall answer for the gain made by this trade. And by the short note of Hammond vs. Douglas, it appears that Lord Loughborough decided the very point. So, in Hill vs. Burnham, A and B being partners, A died, having by his will appointed B his executor. A's children then filed a bill against B for an account, and Lord Eldon declared that, the testator's trade having been carried on after his death with his capital, the plaintiffs were entitled to the profits in proportion to the shares they were respectively entitled to in his personal estate. So, where a dissolution of a partnership for a term of years was set aside as fraudulent after the expiration of the term; the business having been in the mean time continued, it was held that the partner who had been improperly excluded had a right to an account, not only to the end of the term, but till a final settlement should take place."

[Authorities cited in the notes are omitted.]

Chancellor Kent in the Third Volume of his Commentaries (12 Ed.) at page 73-4 [bottom pages] says:

"If, however, before a sale or a settlement of the joint concern, the partner in possession of the capital continues the trade with the joint property, he will do it at his own risk, and will be bound to account with the other partner, or the representatives of a deceased partner, for the profits of the trade, subject to just allowances."

In 2 Bates on Partnership §794, it is said:

> "If, after dissolution, one or some of the partners continue the business with the capital of the former associates, or engage the assets in new ventures, they can be held answerable to the other partners, or their representatives if dead, bankrupt or lunatic, for a share of the profits thereby earned, whether the dissolution was by the bankruptcy of a partner, death, lunacy, retirement, abandonment, expulsion or otherwise."

[Numerous authorities are cited in note to support the text.]

In 136 Mass. 263, Freeman vs. Freeman, the Court by C. Allen, J. said:

> "Letters patent belonging to a firm are to be dealt with, on a dissolution of the firm, like other partnership property. If used by a surviving partner for the purpose of profit, he will be held to an account, as in other cases of using assets of the firm; * * *"

In 18 N. J. Eq. 386, Hartman vs. Woehr et al., the Chancellor said:

> "Hartman, being a partner, is entitled to an account of the profits. Even where the partnership has been legally dissolved, and one of two partners continue to carry on the business, unlawfully using the property of the other in it, the retiring partner is, at his option, entitled to his share of the profits made while his property is thus used; this is settled by a series of well considered cases. See Story on Part. Sec. 343; Collyer on Part. Sec. 324."

The rule in varying language and circumstances as above laid down is eminently just. It was Hannaman as much as Karrick that helped to make the profits; the business belonged to one no more than to the other. Hannaman has a peculiar right, under the circumstances, to have the above rule applied in this case; he insisted, from the moment Karrick took forcible in possession, participating in the

partnership business, and continued such assertions ever after. Even when Hannaman brought suit, and issue was joined, he had every reason to believe there were no profits, as Karrick in his answer swore there were none.

POINT II.

In the second place a partnership formed for a definite unexpired period, cannot be terminated at any time by either party without cause.

An able discussion of this question is found in 23 Am. Law Register (N. S.) 689, by Benjamin Rex, and much that might be said here on this question is omitted, relying on the court to read the article.

In brief, the author arrives at the result, in view of all authorities, that the rule [the one appellee contends for.] sanctioned by the united voice of the Roman, the French, the Scotch and the English jurists, and above all by the voice of honor, is now the established rule in America.

In Story on Partnership, at Sec. 275, it is said:

> "In cases, where the partnership is by the agreement to endure for a limited period of time, the question, whether it may within the period be dissolved by the mere act or will of one of the partners, without the consent of all the others, does not seem to be absolutely and definitely settled in our jurisprudence, although it would not seem, upon principle, to admit of any real doubt or difficulty. Whenever a stipulation is positively made, that the partnership shall endure for a fixed period, or for a particular adventure or voyage, it would seem to be at once inequitable and injurious to permit any partner, at his mere pleasure, to violate his engagement, and thereby to jeopard, if not sacrifice, the whole objects of the partnership; for the success of the whole undertaking may depend upon the due accomplishment of the adventure or voyage, or the entire time be required to put the partnership into beneficial operation It is no answer to say, that such a violation of the engage-

ment may entitle the injured partners to a compensation in damages; for, independently of the delay and uncertainty attendant upon any such mode of redress, it is obvious, that the remedy may be, nay, must be, in many cases utterly inadequate and unsatisfactory. If there be any real and just ground for the abandonment of the partnership, a court of equity is competent to administer suitable redress. But that is exceedingly different from the right of the partner, *sua sponte*, from mere caprice, or at his own pleasure, to dissolve the partnership. In short, the opposite doctrine, although perhaps in some measure countenanced by the Roman law, is founded upon reasons exceedingly artificial, if not indefensible. It proceeds upon a ground which cannot be maintained in common sense or justice, that any partner has a right to found his own claim to immediate indemnity and safety upon a known injury to the rights and interests of his co-partners, whatever may be the nature or extent thereof."

In 60 Miss. 576, Berry vs. Folkes, it is said:

"A partnership may be dissolved at the will of either partner, unless there be a distinct covenant against the exertion of this right, or unless manifestly contrary to the clear understanding and agreement of the parties."

In 13 N. J. Eq. 302, Van Kuren v. The Trenton etc. Co., it appeared that plaintiff and defendants formed a partnership for twelve years, and before its expiration, the defendants forcibly excluded the plaintiff from the business; plaintiff secured an injunction, and one of the questions involved was whether it should be dissolved.

The Chancellor on page 306 said:

" * * The agreement, whether it constituted a partnership or not, was by its terms, to continue for twelve years, unless sooner annulled by mutual consent; and the defendants clearly could not determine the contract of their own motion and forcibly exclude the defendant [plaintiff] from the possession and enjoyment of his rights. * *"

In 18 N. J. Eq. 383, Hartman v. Woehr et al., a part-

nership was formed for the period of five years, and before its expiration, the defendants ejected the plaintiff from the partnership business. The plaintiff afterwards brought an action for an accounting and dissolution.

The Chancellor on page 386 says:

> " * * The defendants had a remedy if he [plaintiff] did not comply with his engagement; they could have asked for a dissolution, and paid him back the amount he put in, and formed a new partnership. But under this agreement, he was a partner for five years, unless the partnership was sooner dissolved. It was not dissolved by the advertisement of January 31st, or by excluding him from the management of the concern. This may constitute good cause for dissolution; and as he prayed for it, and the defendants deny his interest and refuse to admit him as a partner, the dissolution must be decreed."

The case in 5 Ark., 270; (39 Am. Dec. 376) Howell vs. Harvey, is discussed in the above quotation from the American Law Register: but it is desired to quote more fully from the opinion. On page 381-2 (39 Am. Dec.), the court by Lacy, J., says:

> "A partnership for a limited period of time cannot be dissolved at the mere pleasure of one of the parties, within the time prescribed. On the contrary, it can only be dissolved from just motives and for a reasonable cause. There is an implied understanding that the partnership shall continue to the expiration of the term, unless where one partner fails in his engagements, or any habitual infirmity renders him unfit to carry on the business, or where the renunciation is for the benefit of the partnership and not for the advantages of the dissolving partner The principle here stated is extracted from all the authorities by Justice Story, and fully approved by him in his complete and admiral treatise upon partnerships. In cases where the partnership is to endure for a limited period of time, the question, whether within that period it may be dissolved by the mere act and will of one of the partners, without the consent of the others, is not definitely or absolutely settled, says Justice

Story, in our jurisprudence. He clearly intimates, if ever such a case should arise, where one partner claimed the right, *sua sponte*, of dissolving the partnership, that he possesses no such power: and he takes the distinction between a court of equity dissolving the partnership, and that of a partner, acting upon his own caprice and pleasure, dissolving the engagement. He admits the doctrine to be somewhat different according to the Roman law; but he denies that a partner has a right to found his own claim to immediate indemnity and safety by committing a known injury to the interest and privileges of his co-partners: and in this opinion he is fully sustained by many elementary writers and a number of adjudged cases of unquestionable authority: Gow. on Part., c. 5, Sec. 1, 219, 225, 226, 288; 3 Coll. Part., b. 1, c. 2, Sec. 21, p. 62, 2d ed.; Kent's Com, Sec. 43, p. 61, 4th ed ; Peacock vs. Peacock, 16 Ves. 56; Crawshay vs. Maule, 1 Swans. 495; Pearpoint vs. Graham, 4 Wash. C. C. 234."

See also:

27 Ala. 245, Johnston vs. Dutton.

THE ONLY SUBSTANTIAL REASON URGED AGAINST THE FOREGOING ARGUMENT IS THE IMPOTENCY OF A COURT TO ENFORCE CORDIALITY BETWEEN INHARMONIOUS PARTNERS.

A court of equity will refuse to dissolve a partnership or appoint a receiver at the instance of the wrongdoing partner.

In 20 N. Y. Eq. 178, Seighortner vs. Weissenborn, the Chancellor said:

"But a partner who, by his own wilful misconduct, has caused such want of confidence, will not be allowed to take advantage of it to procure a dissolution. Harrison vs. Tennant, 21 Beav. 482; Baxter vs. Welsh, 1 DeG & Sm. 173; Lindley on Part. 185, 186; Collyer on Part., Sec. 297."

In 84 Ill., page 124-5, the court by Mr. Justice Scott said:

> "In all the cases we have examined, where the partnership has been dissolved on account of the unfriendly relations between the partners, it has generally been at the instance of a party who was not himself at fault, and where the estrangement was such as would prevent the successful management of the business. A party who is the author of the ill-feeling between himself and partners ought not be permitted to make the relation he has induced, the ground of a dissolution of the partnership. His conduct may have been taken with a view to that very result, and it would be inequitable to allow him advantage from his own wrongful acts. It would allow one partner at his election, to put an end to his own deliberate contract, when the other had been guilty of no wrongful act or omission of duty. The results flowing from the premature dissolution of a partnership might be most disastrous to a partner who had embarked his capital in the enterprise."

The delinquent partner in such case is turned out of court unworthy of relief and refused a favorable decree; as often as such partner comes into court for relief, the Chancellor promptly refuses; consequently, as long as the other partner endures the wrongdoer, no relief is obtained in a court of equity, and the partnership would continue to exist as long as the partner without fault did not complain. But if the wrongdoer instead of appealing to the Chancellor for relief takes the matter in his own hands and forcibly ejects his partner, in other words declares and executes his own decree, then by some authorities there is a dissolution. There is no inherent virtue in the decree of the wrongdoer, there is in a court of equity; yet in practical results, the decree of the wrongdoer by such cases is superior to that of a court of equity. Logically a court should either grant the wrongdoer equitable relief at his instance, or else deny efficacy to his wrongful act, as both acts lead to the same result. There is a legal and logical inconsistency in turning the wrongdoer out of court without dissolution, yet vitalizing the dissolution the wrongdoer forcibly decrees.

If the impotency of a court of equity to enforce cordiality is a reason for recognizing the decree obtained *brutum fulmen*, then it should be a cogent reason to decree a suit of dissolution at the instance of the wrongdoer, but the authorities declare the contrary on fundamental principles of equity and inherent justice, and refuse virtue to the wrongdoer's act, and do not allow him to accomplish indirectly that which he could not directly. If Karrick cannot dissolve the partnership by a decree in equity, because in the wrong, then he cannot do so by his own decree. As opposed to the above it may be said that the wrongdoer after being turned out of court may still indirectly cause a dissolution by an assignment or sale of the whole business, and as he can do so, a court of equity should do likewise.

There are two complete answers to such fallacy:

(1) A court of equity never grants relief on the principle that the party rightfully turned out of court may in some wrongful manner accomplish the same result: if relief were granted on such principle, the days of wager of battle would have returned.

(2) It is fundamentally different to sell or assign the whole partnership business than it is to forcibly exclude a partner and continue the business. In the first case both parties go out together, stand upon equal footing, and the partner wronged receives as much as the other, because the wrongdoer then cannot reap the advantage of pocketing the anticipated profits *undivided*, which was the motive of the wrongful exclusion.

In the case where the business is continued, the wrongdoer recognizing the business as profitable and becoming more so, ejects his partner and dates a dissolution from such time: thus the business is continued, the profits

are accumulated undivided, and all done with partnership property. The cases are intrinsically different, in one, the business is closed; in the other, continued; in one the profits are not harvested; in the other, they are. On being ejected, Hannaman had his option to sue for a dissolution and receiver, or wait and sue for damages, or for an accounting. He sued for an accounting but in doing this he did not wait to see if the business was profitable or unprofitable; because he had every reason to believe when issue was joined the business was unprofitable.

As Karrick had no legal power to drive Hannaman out of the partnership, so he had no right to insist that Hannaman should accomplish the same thing by an immediate suit; these alleged rights are reciprocal, both could be done or neither; if Karrick could not drive Hannaman out, then it followed that Karrick could not insist on Hannaman bringing suit for dissolution.

The methods resorted to by Karrick are ancient—so are the results.

In 2 Lind. on Part. [2 Am. Ed.] at pages 1263-4, [bottom pages] it is said:

> "In the absence of an express agreement to that effect, there is no right on the part of any of the members of an ordinary partnership to expel any other member. Nor, in the absence of express agreement, can any of the members of an ordinary partnership forfeit the share of any other member, or compel him to quit the firm on taking what is due to him. As there is no method, except a dissolution, by which a partner can retire against the will of his co-partners, so there is no method except a dissolution by which one partner can be got rid of against his own will.
>
> "**Driving a Partner to a Dissolution.**—The consequence of this is that when partners disagree and cannot dissolve, except with the concurrence of all, it is not unusual for some of them so to conduct themselves towards another as, if possible, to drive him to agree on a dissolution. But

> it need hardly be said that a scheme of this kind, will, if possible, be frustrated; and redress may be obtained in such a case without dissolving the partnership."

If appellant's brief is received in time to be answered, we may file a brief in reply in case there should be anything in it not answered in this brief.

It is respectfully submitted that this case should be affirmed.

JOSEPH L. RAWLINS,
PARLEY L. WILLIAMS,
Attorneys for Appellee.

KARRICK *v.* HANNAMAN.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF UTAH.

No. 12. Argued October 27, 28, 1896. — Decided November 29, 1897.

A partner who, within the term stipulated in the articles of partnership for its continuance, undertakes, of his own will, and without the consent of his copartner, to dissolve the partnership, takes exclusive possession of its property and business, profitably carries on the business with the property for his own benefit, and excludes his copartner from any participation in the business or the profits, is liable (whether the partnership should or should not be considered as having been dissolved by his acts) to account to the copartner for his share of the property and of the profits of the partnership, according to the partnership agreement.

THIS was a suit brought April 17, 1890, in the third judicial district court of the Territory of Utah, by Hannaman against Karrick for the dissolution of a partnership, formed February 3, 1886, by an agreement in writing, by which they agreed to become partners in a mercantile and laundry business for the term of five years from that date, with a capital stock of $25,000, of which the plaintiff was to furnish $5000, and the defendant $20,000; the defendant lent the plaintiff the sum of $5000 for five years, for which the plaintiff gave a promissory note, payable at the end of that time, and secured by mortgage upon his interest in the partnership property; the plaintiff was to give his entire time and attention to the partnership business, and the defendant was to devote to it only such time as he should see fit; the plaintiff to have the control and management of the business generally and entirely, except as the defendant might designate, and such matters to be subject to mutual agreement; one half of the

net profits of the business to go to the defendant in repayment of $15,000 of the capital stock furnished by him, and the other half to be allowed to remain in the business, except that each partner might draw out not exceeding $125 a month for personal expenses; the profits and losses to be shared equally, and neither party to have any other salary or compensation for services; and the title and interest of the partners in the partnership property to be proportionate to their respective contributions to the capital.

The complaint alleged the following facts: The parties carried on business in conformity with the agreement until February 1, 1888, when the defendant took exclusive possession of all the partnership business, stock, books and accounts, and of the premises where the business was carried on, and ever afterwards prevented the plaintiff from participating in any manner in the business or deriving any benefits therefrom. The plaintiff until that date performed his part of the agreement, and was ever after ready and willing to perform it, and so informed the defendant. From that date, the defendant wrongfully, and in fraud of the plaintiff's rights, carried on and controlled the partnership business for his own exclusive benefit, and applied to his own use from the proceeds and profits of the same large sums of money, exceeding the proportion to which he was entitled. On January 1, 1890, the defendant, without the plaintiff's knowledge or assent, sold and delivered to the Bast-Marshall Mercantile Company all the assets and property of the partnership. The complaint prayed for a dissolution of the partnership, the appointment of a receiver, an injunction against interfering with the property, its application to the payment of the partnership debts and a division of the remainder between the partners, the setting aside and cancellation of any transfer or assignment to the Bast-Marshall Mercantile Company, and an account.

The defendant Karrick, in his answer, admitted the partnership, and his own taking possession on February 1, 1888; but denied the other allegations of the complaint; and alleged that the plaintiff mismanaged the business in various particulars specified, and that when the defendant took possession

the partnership was insolvent and heavily in debt, and the plaintiff was owing to it a large sum of money, and was insolvent, and the partnership was then dissolved by mutual consent.

The Bast-Marshall Mercantile Company was originally made a defendant, and filed a separate answer. But the plaintiff afterwards dismissed his suit as against that company; the case was referred, by consent of the remaining parties, to a referee to report his findings of fact and conclusions of law to the court; and at the hearing before the referee much evidence was introduced by either party in support of his allegations and denials.

On October 5, 1891, the referee made his report, in which he set forth all the evidence; and by which he found that the facts were as alleged in the complaint, and were not as alleged in the answer of Karrick; and stated an account, resulting as follows:

Unadjusted and undivided profits January 1, 1890, including $2616.25 then uncollected by defendant	$22,858	18
Profits realized after January 1, 1890	99	90
Wrongfully disbursed by defendant after that date	379	50
	23,337	58
Unavoidable losses after January 1, 1890	2,005	12
Net profits	21,332	46
Of which, plaintiff is entitled to one half	10,666	23
Capital put by plaintiff into the business	5,208	89
	15,875	12
Due from plaintiff to defendant on note mentioned in partnership agreement, without interest	5,000	00
Principal sum due to plaintiff	10,875	12
Interest at eight per cent yearly from January 1, 1890, to October 5, 1891, on $8258.87, the difference between $10,875.12 and $2616.25 uncollected January 1, 1890	1,165	41
Total amount due to plaintiff	$12,040	53

Statement of the Case.

From the findings of fact the referee concluded, as matter of law, that the partnership was not dissolved; but that it expired February 3, 1891, according to the terms of the agreement; that the profits and losses of the partnership business should be divided equally between the parties, after crediting each with his advances to and investments in the partnership; and that the sum of $12,040.53 was therefore owing to the plaintiff. The court confirmed the referee's findings of fact and conclusions of law, and entered a decree accordingly.

The defendant appealed to the Supreme Court of the Territory, which adopted the findings of fact in the district court, and held that, for the reasons stated in its opinion, (the material part of which upon this point is copied in the margin,[1]) the defendant could not dissolve the partnership,

[1] "Where the partnership is merely at will, the right of one partner to terminate it must be conceded; but where by agreement it is to continue for a time stipulated, the party seeking a dissolution before the expiration of the time ought in justice at least be required to act in good faith, and at a reasonable time, and in a reasonable manner. In the case of a partnership for a stipulated time of duration, where the business has been established, is becoming profitable, and has good future prospects, to allow one of the partners *sua sponte* to expel the other and dissolve the partnership, with a view to appropriate the business to himself, would be to adopt a doctrine at once inequitable, and unsupported by either reason or justice. There seems to be no good reason why a person should be allowed to commit a breach of his contract in such case, while in all other cases of flagrant violation, not within the partnership, he would be compelled to specifically perform, if it was within his power to do so. Why should a partner be thus allowed to ruin the business of the firm from mere caprice, or of his own volition, without cause, and in violation of his agreement, and sacrifice the entire object of the partnership? That such a violation may entitle the injured partner to damages is no answer, for damages, in many cases, must necessarily prove to be utterly inadequate to compensate for the destruction of a profitable and growing business; and, besides, this mode of redress is usually slow and unsatisfactory, and is not a remedy that will or can do complete justice between the parties. Where there is such a breach between the parties as to render continuance impossible, or when dissension has dispelled the hopes, prospects and advantages which induced its formation, or if for any just cause the partnership ought to be dissolved before the expiration of the term, then a court of equity is competent to grant relief. But it would scarcely seem to come within the principles of justice to permit one partner to expel another from a profitable business

without reasonable cause, and without the plaintiff's consent, before the expiration of the term stipulated in the partnership articles; and therefore that the partnership had not

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for some real or fancied wrong or mismanagement, and then continue the business himself, and profit by his own wrong, responsible only in damages.

"Mr. Justice Story, in his Commentaries on the Law of Partnership, § 275, speaking of the power of one partner to dissolve the partnership where the time of duration is stipulated, says: 'In cases where the partnership is by the agreement to endure for a limited period of time, the question whether it may within the period be dissolved by the mere act or will of one of the partners, without the consent of all the others, does not seem to be absolutely and definitely settled in our jurisprudence, although it would not seem, upon principle, to admit of any real doubt or difficulty. Whenever a stipulation is positively made that the partnership shall endure for a fixed period, or for a particular adventure or voyage, it would seem to be at once inequitable and injurious to permit any partner at his mere pleasure to violate his engagement, and thereby to jeopard, if not sacrifice, the whole objects of the partnership; for the success of the whole undertaking may depend upon the due accomplishment of the adventure or voyage, or the entire time be required to put the partnership into beneficial operation.' In *Gerard* v. *Gateau*, 84 Illinois, 121, Mr. Justice Scott, delivering the opinion of the court, said: 'A party who is the author of the ill feeling between himself and partners ought not to be permitted to make the relation he has induced, the ground of a dissolution of the partnership. His conduct may have been taken with a view to that very result, and it would be inequitable to allow him advantage from his own wrongful acts. It would allow one partner, at his election, to put an end to his own deliberate contract, when the other has been guilty of no wrongful act or omission of duty. The results flowing from a premature dissolution of a partnership might be most disastrous to a partner who had embarked his capital in the enterprise.' So in *Henn* v. *Walsh*, 2 Edw. Ch. 129, the vice chancellor said: 'A partnership agreement, like any other, is binding upon the parties; and they must adhere to its terms. Neither partner is at liberty to recede from it against the will of the other, without a sufficient cause. Mere dissatisfaction by one partner will not justify him in filing a bill for a dissolution where, by the express agreement, it is to continue for a definite term; and this court will not interfere to dissolve the contract upon such ground.'

"The views thus expressed have the apparent support of most elementary writers, and seem to be in conformity with the doctrine prevailing in England. The contrary doctrine, if not indefensible, is founded on reasons exceedingly artificial. It is based on the ground that one partner has the right to found his claim, real or otherwise, to immediate safety and indemnity, on an obvious injury to the interests and rights of another, which is alike inequitable and unjust; and we think it is not supported by the

been dissolved by the acts of the defendant; but that, as each partner was permitted by those articles to draw out of the partnership $125 a month for personal expenses, the defendant should have been allowed the sum of $3000 as personal expenses for the two years during which he conducted the business of the firm; and that the judgment should be modified by deducting one half of this sum, and, so modified, be affirmed for the sum of $10,540.53. 9 Utah, 236. The defendant appealed to this court.

Mr. J. M. Wilson for appellant. *Mr. J. G. Sutherland*, *Mr. A. Howat* and *Mr. C. W. Bennett* were on his brief.

Mr. Joseph L. Rawlins for appellee. *Mr. Parley L. Williams* was on his brief.

Mr. Justice Gray, after stating the case, delivered the opinion of the court.

Much of the argument for the appellant was devoted to a discussion of conflicting evidence, which is not open to examination by this court, its authority upon appeal from the Supreme Court of a Territory being limited to the question whether the facts found by that court support its judgment. *Haws* v. *Victoria Co.*, 160 U. S. 303; *Harrison* v. *Perea*, *ante*, 311.

The principal question of law discussed in the opinion of the Supreme Court of the Territory, and at the argument in this court, was whether a partnership, which by the copartnership articles is to continue for a specified time, can be dissolved by one partner at his own will without the assent of the other before the expiration of that time.

It is universally conceded that a contract of partnership, containing no stipulation as to the time during which it shall

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weight of authority. Story on Partnership, §§ 275, 276; Story Eq. Jur. § 673; Lindley on Partnership, [bk. 4, c. 1, (5th ed.)] p. 575, § 2; *Ferrero* v. *Buhlmeyer*, 34 How. Pract. 33; *Pearpoint* v. *Graham*, 4 Wash. C. C. 232; *Peacock* v. *Peacock*, 16 Ves. 49; *Cash* v. *Earnshaw*, 66 Illinois, 402; *Van Kuren* v. *Trenton Co.*, 13 N. J. Eq. 302.

continue in force, does not endure for the life of the partners, or of either of them, nor for any longer time than their mutual consent, but may be dissolved by either partner at his own will at any time. *Peacock* v. *Peacock*, 16 Ves. 49; *Crawshay* v. *Maule*, 1 Swanst. 495; *Neilson* v. *Mossend Iron Co.*, 11 App. Cas. 298; 3 Kent Com. 53; Story on Partnership, § 269.

Upon the question how far the status or relation of a partnership, which by the partnership agreement is to continue for a certain number of years, can be determined by one partner without the consent of the other before the expiration of that time, there has been some difference of opinion.

The principal reasons and authorities in favor of the position that a contract of partnership for a definite time cannot be dissolved at the mere will of one partner are stated or referred to in the opinion of the Supreme Court of the Territory in this case, reported in 9 Utah, 236.

Those which support the opposite view may be summed up as follows: A contract of partnership is one by which two or more persons agree to carry on a business for their common benefit, each contributing property or services, and having a community of interest in the profits. It is in effect a contract of mutual agency, each partner acting as a principal in his own behalf and as agent for his copartner. *Meehan* v. *Valentine*, 145 U. S. 611. Every partnership creates a personal relation between the partners, rests upon their mutual consent, and exists between them only. Without their agreement or approval, no third person can become a member of the partnership, either by act of a single partner, or by operation of law; and the death or bankruptcy of a partner dissolves the partnership. 3 Kent Com. 25, 55, 58; *Wilkins* v. *Davis*, 2 Lowell, 511. So an absolute assignment by one partner of all his interest in the partnership to a stranger dissolves the partnership, although it does not make the assignee a tenant in common with the other partners in the partnership property. *Bank* v. *Carrolton Railroad*, 11 Wall. 624, 628; *Marquand* v. *New York Manuf. Co.*, 17 Johns. 525, 528, 535. No partnership can efficiently or beneficially

carry on its business without the mutual confidence and co-operation of all the partners. Even when, by the partnership articles, they have covenanted with each other that the partnership shall continue for a certain period, the partnership may be dissolved at any time, at the will of any partner, so far as to put an end to the partnership relation and to the authority of each partner to act for all; but rendering the partner who breaks his covenant liable to an action at law for damages, as in other cases of breaches of contract. *Skinner* v. *Dayton*, 19 Johns. 513, 538; 3 Kent Com. 54, 55, 62; *Cape Sable Co.'s Case*, 3 Bland, 606, 674; *Monroe* v. *Conner*, 15 Maine, 178, 180; *Mason* v. *Connell*, 1 Whart. 381, 388; *Slemmer's Appeal*, 58 Penn. St. 168, 176; *Blake* v. *Dorgan*, 1 Greene (Iowa), 537, 540; *Solomon* v. *Kirkwood*, 55 Mich. 256, 259, 260. According to the authorities just cited, the only difference, so far as concerns the right of dissolution by one partner, between a partnership for an indefinite period and one for a specified term, is this: In the former case, the dissolution is no breach of the partnership agreement, and affords the other partner no ground of complaint. In the latter case, such a dissolution before the expiration of the time stipulated is a breach of the agreement, and as such to be compensated in damages. But in either case the action of one partner does actually dissolve the partnership.

A court of equity, doubtless, will not assist the partner breaking his contract to procure a dissolution of the partnership, because, upon familiar principles, a partner who has not fully and fairly performed the partnership agreement on his part has no standing in a court of equity to enforce any rights under the agreement. *Marble Co.* v. *Ripley*, 10 Wall. 339, 358. But, generally speaking, neither will it interfere at the suit of the other partner to prevent the dissolution, because, while it may compel the execution of articles of partnership so as to put the parties in the same position as if the articles had been executed as agreed, it will seldom, if ever, specifically compel subsequent performance of the contract by either party, the contract of partnership being of an essentially personal character. Batten on Specific Per-

formance, 165–167; Lindley on Partnership, bk. 3, c. 10, § 4; Pomeroy on Specific Performance, § 290; *Scott* v. *Rayment*, L. R. 7 Eq. 112; *Satterthwait* v. *Marshall*, 4 Del. Ch. 337, 354; *Reed* v. *Vidal*, 5 Rich. Eq. 289; *Somerby* v. *Buntin*, 118 Mass. 279, 287. Especially where, by the partnership agreement, as in the case at bar, the defendant is to supply all or most of the capital, and the plaintiff is to furnish his personal services, the agreement cannot be specifically enforced against the plaintiff, and will not be enforced against the defendant. *Stocker* v. *Wedderburn*, 3 K. & J. 393, 404; *Buck* v. *Smith*, 29 Michigan, 165.

In the somewhat analogous case of a contract of hiring and service, it is well settled that a court of equity cannot compel the performance of the service, although it may in some cases enforce a negative stipulation not to serve any third person within the time agreed. *Dietrichsen* v. *Cabburn*, 2 Phil. Ch. 52, 59, and cases cited; *Lumley* v. *Wagner*, 1 D. M. & G. 604; *Wolverhampton & Walsall Railway* v. *London & Northwestern Railway*, L. R. 16 Eq. 433, 440; *Whitwood Chemical Co.* v. *Hardman*, (1891) 2 Ch. 416; *Davis* v. *Foreman*, (1894) 3 Ch. 654; 13 Law Quarterly Review, 306; *Tobey* v. *Bristol*, 3 Story, 800, 824.

We are not prepared, therefore, to assent to the opinion of the court below that a partnership for a definite time cannot be dissolved by one partner at his own will, and without the consent of his copartner, within that time; and consequently that the partnership between these parties was not dissolved on February 1, 1888, when the defendant assumed exclusive possession and control of the business and property of the partnership, and excluded the plaintiff from any participation therein. But it is unnecessary to express an opinion upon this point, because, however it might be decided, it would not affect the conclusion in favor of the plaintiff in the present case.

Even if the partnership should be considered as having been actually dissolved at that date, yet the dissolution did not put an end to the plaintiff's right to his share in the property and the profits of the partnership. In a case in which both parties,

in their pleadings, assumed the partnership to have been dissolved, this court, speaking by Mr. Justice Miller, held that drunkenness and dishonesty on the part of one partner and his consequent exclusion from the business did not authorize his copartner, "of his own motion, to treat the partnership as ended and to take himself all the benefits of their joint labors and joint property," or exempt him from responsibility to account to the excluded partner. *Ambler* v. *Whipple*, 20 Wall. 546, 555, 557. And in a later case, the court, speaking by Mr. Justice Woods, said: "However the question may be decided, whether one partner may by his own mere will dissolve a partnership formed for a definite purpose or period, it is clear that upon such a dissolution one partner cannot appropriate to himself all the partnership assets, or turn over the share of his partner to another with whom he proposes to form a new partnership." *Pearce* v. *Ham*, 113 U. S. 585, 593.

A partner who assumes to dissolve the partnership, before the end of the term agreed on in the partnership articles, is liable, in an action at law against him by his copartner for the breach of the agreement, to respond in damages for the value of the profits which the plaintiff would otherwise have received. *Bagley* v. *Smith*, 10 N. Y. 489; *Dennis* v. *Maxfield*, 10 Allen, 138. In a court of equity, a partner who, after a dissolution of the partnership, carries on the business with the partnership property is liable, at the election of the other partner or his representative, to account for the profits thereof, subject to proper allowances. *Ambler* v. *Whipple*, and *Pearce* v. *Ham*, above cited; *Hartman* v. *Woehr*, 3 C. E. Green (18 N. J. Eq.), 383; *Freeman* v. *Freeman*, 136 Mass. 260; *Holmes* v. *Gilman*, 138 N. Y. 369; 3 Kent Com. 64.

In the case at bar, by the terms of the agreement in writing, dated February 3, 1886, under which the partnership was formed, it was to continue for five years, that is to say, until February 3, 1891; the plaintiff was to contribute $5000, and the defendant $20,000, to the capital; the defendant lent the plaintiff the sum of $5000, for which the plaintiff gave his promissory note, payable at the end of the five years; the plaintiff was to have the general management of the business; each

partner might draw out not exceeding $125 a month for personal expenses; the profits and losses were to be shared equally, and neither partner was to have any other compensation for services; and their title in the partnership property was to be in proportion to their contributions to the capital.

By the facts found by the courts of the Territory, it appears that the business was carried on, according to the agreement, for two years, or until February 1, 1888; that the defendant then took exclusive possession of the property and the business of the partnership, and thenceforth carried on the business profitably and for his own benefit, and excluded the plaintiff from any participation in the business or the profits, although the plaintiff was, as he informed the defendant, ready and willing to perform his part of the partnership agreement; and the defendant on January 1, 1890, a year before the expiration of the term agreed on, and without the plaintiff's knowledge or assent, sold out and delivered to a stranger all the property of the partnership.

The judgment of the court of first instance charged the defendant with the amount of capital paid by the plaintiff into the partnership, deducting, however, the whole amount of the plaintiff's promissory note payable to the defendant at the end of the term of five years; and further charged the defendant with half of the net profits of the business during the two years that he carried it on after ousting the plaintiff and before selling out to a stranger, and with half of the wrongful disbursements of the defendant afterwards. The Supreme Court of the Territory, affirming the judgment in other respects, held that, as by the agreement of partnership each partner was permitted to draw out a certain sum monthly for personal expenses, the defendant was entitled to such an allowance monthly for the two years during which he conducted the business, and the same should be deducted from the profits to be accounted for, and the judgment in favor of the plaintiff reduced accordingly. The court made no such allowance to the plaintiff. And, in accordance with the partnership articles, neither partner was allowed any compensation for his services other than his half of the profits.

Syllabus.

It does not appear to have been suggested by the defendant in either of the courts of the Territory, and could not successfully be contended, that in estimating the damages or the profits which the plaintiff was entitled to recover, any deduction should be made by reason of his not having performed during those two years the services, as manager of the business, which he had agreed by the partnership articles to perform. No finding as to the value of such services was made or requested; and the defendant himself, not only refused to let the plaintiff, as he offered to do, perform them during those two years, but, in his answer and at the hearing before the referee, insisted that the plaintiff's services as manager were of no benefit to the partnership.

The result is that, whether the partnership should or should not be considered to have been dissolved when the defendant ousted the plaintiff and assumed the exclusive possession and control of the property and business of the partnership, the defendant has shown no ground for reversing or modifying the final decree of the Supreme Court of the Territory.

Decree affirmed.